137-160

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 774.

THE UNITED STATES, APPELLANT,

vs.

THE TRINIDAD COAL AND COKING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED APRIL 13, 1889.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 16th day of April, A. D. 1888, came the United States of America, by Henry W. Hobson, esq., its solicitor, and filed in said court its bill of complaint and sued out of and under the seal of said court a subpœna in chancery against the Trinidad Coal and Coking Company.

And the said bill of complaint is in words and figures as follows, to wit:

Bill of complaint.

In the circuit court of the United States in and for the district of Colorado.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TRINIDAD COAL & COKING COMPANY, defendant. } In chancery.

To the honorable the judges of the circuit court in and for the district of Colorado:

2 The United States of America, by A. H. Garland, its Attorney-General, and Henry W. Hobson, its attorney in and for the district aforesaid, bring this its bill of complaint against the Trinidad Coal and Coking Company, a corporation created by and existing under the laws of the State of Colorado.

Whereupon, your orator complains and showeth unto your honors that the defendant, the Trinidad Coal and Coking Company, is a corporation created by, and duly organized and existing under, the laws of the State of Colorado, and engaged, among other things, in the business of coal mining.

I. Further complaining, your orator showeth unto your honors that on the 4th day of June, 1883, and for a long period of time prior thereto, your orator was the owner in fee-simple of the following described tracts of land situated in the county of Las Animas, State of Colorado, within the Pueblo land district, and being vacant coal lands of the United States, amounting in the aggregate to $954\frac{34}{100}$ acres.

(1) The northeast quarter, section six, township thirty-four, south range sixty-three, west of the sixth principal meridian.

(2) Southeast quarter, section six, township thirty-four, south range sixty-three, west of the sixth principal meridian.

(3) The southwest quarter, section six, township thirty-four, south range sixty-three, west of the sixth principal meridian.

(4) Southwest quarter, section thirty-two, township thirty-three, south range sixty-three, west of the sixth principal meridian.

(5) Southeast quarter, section thirty-two, township thirty-three, south range sixty-three, west of the sixth principal meridian.

3 (6) Northeast quarter, section thirty-two, township thirty-three, south range sixty-three, west of the sixth principal meridian.

And your orator further showeth unto your honors that on or about the fourth day of June, 1883, one T. J. Peter and one Robert Savage were officers and stockholders of the defendant corporation, and William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer were employés of said defendant. And your orator showeth that on or about the date last aforesaid, to-wit, June 4th, 1883, the said T. J. Peter, the said Robert Savage, and certain other officers and members of said defendant company, whose names are unknown to your orator, together with the said William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer, employés of the aforesaid company, did devise and form a certain fraudulent scheme and device, and did fraudulently and illegally conspire, combine, and confederate together for the purpose of procuring patents and title from your orator for all the above tracts of land for the benefit and on behalf of said defendant corporation, and for the purpose of enabling said corporation to fraudulently obtain titles from your orator for your orator's vacant coal lands in excess of three hundred and twenty acres contrary to the statutes of the United States in such cases made and provided. And your orator avers that the fraudulent scheme and device so formed as aforesaid were to be carried out and effected by a violation of the laws of the United States with regard to the purchase of vacant coal lands belonging to your orator, and in the manner and by the means hereinafter set out.

Further complaining showeth your orator unto your honors that having formed the fraudulent scheme, device, and confederation
4 aforesaid, the said T. J. Peter, Robert Savage, William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer, and those associated with them, or some one of them, or some one acting for them and in their behalf, did in furtherance of said fraudulent scheme and device, and on or about the fourth day of June, 1883, write and prepare, or cause to be written and prepared, two certain affidavits, one of which was in substance and to the effect, that no portion of the tract of land described as the northeast quarter of section six, township thirty-four, south of range sixty-three, west of the sixth principal meridian, and containing one hundred and fifty-two & 53-100ths acres, was in the pos ession of any other party; that said Robert Savage was twenty-one years of age, a citizen of the United States, and had never held nor purchased, as an individual, or as a member of any association, lands under the laws of the United States relating to the sale of coal lands of the United States; that he, the said Savage, was well acquainted with the character of said land and with every legal subdivision thereof, and had frequently passed over the same; that his knowledge of said land was such as to enable him to testify understandingly in regard thereto; that said land contained large deposits of coal and was chiefly valuable therefor; that there was not, to his knowledge, within the limits thereof any vein, or lode of quartz or other rock in place, bearing gold, silver, or copper, and that there was not within the limits of said land, to his knowledge, any valuable deposits of gold, silver, or copper. And this affidavit was subscribed and sworn to by the said Robert Savage on the

fourth day of June, 1883, before Mark L. Blunt, register of your orator's land office, at Pueblo. The other of said affidavits was also then
5 and there subscribed and sworn to before said register by the said William H. Leffingwell and the said Milford N. Wells, and it set forth in substance and effect that they, the said affiants, were and each of them was of lawful age; that they were well acquainted with the said tract of land and with each and every legal subdivision of the same, from having frequently passed over it; that their knowledge of such land was such as to enable them to testify understandingly with regard thereto; that the same was chiefly valuable for coal; that there was not, to their knowledge, nor to the knowledge of either of them, within the limits of said land, any vein or lode of quartz or rock in place bearing gold, silver, or copper; that there was not within said limits, to their knowledge, any valuable deposits of gold, silver, or copper, and that they were not interested directly or indirectly in the said land or any part thereof, as owners or otherwise.

And your orator further showeth that after said affidavits had been written out, prepared, subscribed and sworn to as aforesaid, and on or about the same date, to wit, June the 4th, 1883, the said conspirators, or some one or more of them, or some one acting for them, presented said affidavits so subscribed and sworn to as aforesaid at your orator's local land office at Pueblo, in the State of Colorado, and then and there filed said affidavits and made application in the name and on behalf of the said Robert Savage, to enter and purchase the said tract of one hundred and fifty-two & $\frac{53}{100}$ acres described in said affidavits as vacant coal land under the statutes of the United States in such cases made and provided, and at the same time there was paid to the receiver of public moneys at your orator's said land office the sum of three thousand & fifty & $\frac{60}{100}$
6 dollars as the purchase price of said tracts of land at twenty dollars per acre; and thereupon, and upon or about the date last aforesaid, the register of your orator's said land office did issue in duplicate a certain certificate to the said Robert Savage in substance and to the effect that said Savage had on that day purchased from said register the land aforesaid and at the price aforesaid, and that the payment of said purchase price had been made in full as required by law, and that further upon presentation of said certificate to the commissioner of your orator's general land office the said Robert Savage should be entitled to receive a patent for said tract of land. And your orator further showeth to your honors that upon the payment of said money and the issuance of said certificate the receiver of public moneys at your orator's said land office at Pueblo did issue to said Robert Savage and did deliver to him, or to said conspirators, or to some one of them, or to some one for him or them, in duplicate, a receipt which was in substance and effect an acknowledgment that said Robert Savage had paid to said receiver the said sum of three thousand fifty & $\frac{60}{100}$ dollars as and for the purchase price of the land aforesaid, at twenty dollars per acre. And your orator showeth that thereupon said register and said receiver did forward all the papers, affidavits, applications, and one of said duplicate certificates and receipts made and filed as aforesaid to your orator's general land office at the city of Washington, and did deliver the other duplicate certificates to conspirators or to some one of them, or to some one acting for them, such delivery purporting to be for and on behalf of the said Robert Savage.

II. Further complaining showeth your orator unto your honors, that the said T. J. Peter, Robert Savage, William H. Leffingwell,
7 Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer having formed said fraudulent scheme, device, and confederation, as aforesaid, they, or some of them, or someone acting for them, did furthermore, and in furtherance of the same, on or about the fourth day of June, 1883, write out and prepare, or cause to be written out and prepared, two certain affidavits, one of which was in substance and to the effect that no portion of the tract of land described as the southeast quarter of section six, township thirty-four, south of range sixty-three, west of the sixth principal meridian, and containing one hundred and sixty acres, was in the possession of any other party; that the said William H. Leffingwell was twenty-one years of age, a citizen of the United States, and had never held or purchased as an individual, or as a member of any association, lands under the laws of the United States relating to the sale of coal lands of the United States; that he, the said William H. Leffingwell, was well acquainted with the character of said land and with each and every subdivision thereof, and had frequently passed over the same; that his knowledge of said land was such as to enable him to testify understandingly with regard thereto; that said land contained large deposits of coal, and was chiefly valuable therefor; that there was not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there was not within the limits of said land, to his knowledge, any valuable deposits of gold, silver, or copper. And this affidavit was subscribed and sworn to by the said William H. Leffingwell on the fourth day of June, 1883, before Mark L. Blunt, register of your orator's land office at Pueblo.

8 The other of said affidavits was also then and there subscribed and sworn to before said register by the said Robert Savage and the said Milford N. Wells, and it set forth in substance and effect that they, the said affiants, were and each of them was of lawful age; that they were well acquainted with the said tract of land and with each and every subdivision of the same from having frequently passed over it; that their knowledge of said land was such as to enable them to testify understandingly with regard thereto; that the same was chiefly valuable for coal; that there was not, to their knowledge, or to the knowledge of either of them, within the limits of said land, any vein or lode of quartz or other rock in place bearing gold, silver, or copper; that there was not within said limits, to their knowledge, any valuable deposit of gold, silver, or copper, and that they were not interested directly or indirectly in the said land, or any part thereof, as owners or otherwise.

Your orator further showeth that after the said affidavits had been written out, prepared, subscribed and sworn to as aforesaid, on or about the same date, to wit, June 4th, 1883, the said conspirators or some one or more of them, or some one acting for them, presented said affidavits so subscribed and sworn to as aforesaid, at your orator's local land office at Pueblo, in the State of Colorado, and then and there filed said affidavits and made application in the name and on behalf of said William H. Leffingwell, to enter and purchase the said tract of one hundred and sixty acres described in said affidavits as vacant coal land under the statutes of the United

States in such cases made and provided, and at the same time there was paid to the receiver of public moneys at your orator's local land office the sum of three thousand two hundred dollars as the purchase price
9 of said tract of land at twenty dollars per acre. And thereupon, and upon or about the date last aforesaid, the register of your orator's said land office did issue in duplicate a certain certificate to the said William H. Leffingwell, in substance and to the effect that said Leffingwell had on that day purchased from said register the land aforesaid and at the price aforesaid, and that the payment of said purchase price had been made in full as required by law; and further, that upon presentation of such certificate to the Commissioner of the General Land Office, the said William H. Leffingwell should be entitled to receive a patent for said tract of land. And your orator further showeth unto your honors that upon payment of said money and the issuance of said certificate, the receiver of public moneys at your orator's said land office did issue to said William H. Leffingwell, and did deliver to him, or to said conspirators, or to some one of them, or to some one for him or them, in duplicate, a receipt which was in substance and effect an acknowledgement that said Leffingwell had paid the said receiver the sum of three thousand two hundred dollars as and for the purchase price of the land aforesaid at twenty dollars per acre; and your orator showeth that thereupon said register and receiver did forward all the papers, affidavits, applications, and one each of said duplicate certificates and receipts, made and filed as aforesaid, to your orator's General Land Office, at the city of Washington, and did deliver the other of said duplicate certificates to said conspirators or to some one of them, or to some one for them, such delivery purporting to be for and on behalf of the said William H. Leffingwell.

III. Further complaining, showeth your orator unto your honors that the said T. J. Peter, Robert Savage, William H. Leffing-
10 well, Milford N. Wells, Alexander Carigmyle, Charles F. Schuman, and Thomas Winsheimer having formed said fraudulent scheme, device, and confederation, as aforesaid, they, or some one of them, or some one acting for them, did furthermore and in furtherance of the same, on or about the fourth day of June, 1883, write out and prepare, or cause to be written out and prepared, two certain affidavits, one of which was in substance and to the effect that no portion of the tract of land described as the southwest quarter of section six, township thirty-four of range sixty-three, west of the sixth principal meridian, and containing one hundred and sixty-one and $\frac{81}{100}$ acres, was in the possession of any other party; that the said Milford N. Wells was twenty-one years of age, a citizen of the United States, and had never held or purchased as an individual, or as a member of any association, lands under the laws of the United States: relating to the sale of coal lands of the United States; that he, the said Milford N. Wells, was well acquainted with the character of said land and with each and every legal sub division thereof, and had frequently passed over the same; that his knowledge of said land was such as to enable him to testify understandingly with regard thereto; that said land contained large deposits of coal, and was chiefly valuable therefor; that there was not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there was not within the limits of said land, to his knowl-

edge, any valuable deposits of gold, silver, or copper. And this affidavit was subscribed and sworn to by the said Milford N. Wells on the fourth day of June, 1883, before Mark L. Blunt, register of your orator's land office at Pueblo.

The other of said affidavits was also then and there subscribed
11 and sworn to before said register by the said Robert Savage and the said William H. Leffingwell, and it set forth in substance and effect that they, the said affiants, were and each of them was of lawful age, and that they were well acquainted with the said tract of land and with each and every legal subdivision of the same, from having frequently passed over it; that their knowledge of said land was such as to enable them to testify understandingly with regard thereto; that the same was chiefly valuable for coal; that there was not, to their knowledge, or to the knowledge of either of them, within the limits of said land any vein or lode of quartz or other rock in place bearing gold, silver, or copper; that there was not within said limits, to their knowledge, any valuable deposit of gold, silver, or copper, and that they were not interested, directly or indirectly, in the said land or any part thereof as owners or otherwise.

Your orator further showeth that after the said affidavits had been written out, prepared, subscribed, and sworn to as aforesaid, and on or about the same date, to wit, June the 4th, 1883, the said conspirators, or some one or more of them, or some one acting for them, presented said affidavits so subscribed and sworn to as aforesaid, at your orator's local land office at Pueblo, in the State of Colorado, and then and there filed said affidavits and made application in the name and on behalf of one Milford N. Wells to enter and purchase said tract of one hundred and sixty-one and $\frac{81}{100}$ acres described in said affidavits as vacant coal land, under the statutes of the United States in such cases made and provided, and at the same time there was paid to the receiver of public moneys at your orator's local land office aforesaid, the sum of three thousand two hundred and thirty-six & $\frac{20}{100}$ dollars as the purchase price of said
12 tract of land at twenty dollars per acre. And thereupon and upon or about the date last aforesaid, the register of your orator's said land office did issue in duplicate a certain certificate to the said Milford N. Wells in substance and to the effect that said Wells had on that day purchased from said register the land aforesaid and at the price aforesaid, and that payment of such purchase price had been made in full as required by law; and further, that upon presentation of such certificate to the Commissioner of the General Land Office the said Milford N. Wells should be entitled to receive a patent for said tract of land. And your orator further showeth to your honors that upon payment of said money and the issuance of said certificate, the receiver of public moneys at your orator's said local land office did issue to said Milford N. Wells and did deliver to him or the said conspirators, or to some one of them, or to some one for him or them, in duplicate, a receipt which was in substance and effect an acknowledgment that said Wells had paid the said receiver the said sum of three thousand two hundred thirty-six & $\frac{20}{100}$ dollars as and for the purchase price of the land aforesaid, at twenty dollars per acre. And your orator further showeth that thereupon said register and receiver did forward all the papers, affidavits, applications, and one each of said duplicate certificates and receipts made and filed as aforesaid, to your orator's

General Land Office at the city of Washington, and did deliver the other of said duplicates to said conspirators, or to some one of them, or to some one acting for them, such delivery purporting to be for and on behalf of the said Milford N. Wells.

IV. Further complaining your orator showeth unto your honors that the said T. J. Peter, Robert Savage, William H. Leffingwell, Milford
13 N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer, having formed said fraudulent scheme, device, and consideration as aforesaid, they, or some of them, or some one acting for them, did furthermore and in furtherance of the same, on or about the fourth day of June, 1883, write out and prepare, or cause to be written out and prepared, two certain affidavits, one of which was in substance and to the effect that no portion of the said tract of land described as the southwest quarter of section thirty-two, township thirty-three south, of range sixty-three west, of the sixth principal meridian, and containing one hundred and sixty acres, was in the possession of any other party; that the said Alexander Craigmyle was twenty-one years of age, a citizen of the United States, and had never held or purchased as an individual, nor as a member of any association, lands under the laws of the United States relating to the sale of coal lands of the United States; that he, the said Alexander Craigmyle, was well acquainted with the character of said land, and with each and every legal subdivision thereof, and had frequently passed over the same; that his knowledge of said land was such as to enable him to testify understandingly with regard thereto; that said land contained large deposits of coal, and was chiefly valuable therefor; that there was not, to his knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper; and that there was not within the limits of said land, to his knowledge, any valuable deposits of gold, silver, or copper; and this affidavit was subscribed and sworn to by the said Alexander Craigmyle on the fourth day of June, 1883, before Mark L. Blunt, register of your orator's land office at Pueblo. The other of said affi-
14 davits was also then and there subscribed and sworn to before said register by the said William H. Leffingwell and the said Milford N. Wells, and it set forth in substance and effect, that they, the said affiants, were and each of them was of lawful age, and that they were well acquainted with the said tract of land and with each and every legal subdivision of the same from having frequently passed over it; that their knowledge of said land was such as to enable them to testify understandingly with regard thereto; that the same was chiefly valuable for coal; that there was not, to their knowledge, or to the knowledge of either of them, within the limits of said land any vein or lode or other rock in place, bearing gold, silver, or copper; that there was not within said limits, to their knowledge, any valuable deposits of gold, silver, or copper, and that they were not interested, directly or indirectly, in said land or any part thereof, as owners or otherwise.

Your orator further showeth that after said affidavits had been written out, prepared, subscribed, and sworn to as aforesaid, and on or about the same date, to wit, June 4, 1883, the said conspirators, or some one or more of them, or some one acting for them, presented said affidavits so subscribed and sworn to as aforesaid at your orator's local land office at

Pueblo, in the State of Colorado, and then and there filed said affidavits and made application in the name and on the behalf of said Alexander Craigmyle, to enter and purchase the said tract of one hundred and sixty acres, described in said affidavits as vacant coal land, under the Statutes of the United States in such cases made and provided, and at the same time there was paid to the receiver of public moneys at your orator's local land office aforesaid, the sum of three thousand two hundred dollars as the purchase price of
15 said tract of land at twenty dollars per acre. And thereupon, and upon or about the date aforesaid, the register of your orator's said land office did issue in duplicate a certain certificate to the said Alexander Craigmyle in substance and to the effect that said Craigmyle purchased from said register the land aforesaid, and at the price aforesaid, and that payment of said purchase price had been made in full as required by law; and further, that upon presentation of said certificate to the Commissioner of the General Land Office the said Alexander Craigmyle should be entitled to receive a patent for said tract of land.

And your orator further showeth unto your honors, that upon payment of said money and the issuance of said certificate, the receiver of public moneys at your orator's said local land office did issue to said Alexander Craigmyle and did deliver to him, or the conspirators, or to some one of them, or to some one acting for him or them, in duplicate, a receipt which was in substance and effect an acknowledgment that said Craigmyle had paid the said receiver the said sum of three thousand two hundred dollars as and for the purchase price of the land aforesaid, at twenty dollars per acre. And your orator showeth that thereupon said register and receiver did forward all the papers, affidavits, applications, and one each of said duplicate certificates and receipt made and filed as aforesaid, to your orator's General Land Office at the city of Washington, and did deliver the other of said duplicates to said conspirators, or to some one of them, or to some one acting for them, such delivery purporting to be for and on behalf of the said Alexandar Craigmyle.

V. Further complaining showeth your orator unto your honors, that the said T. J. Peter, Robert Savage, William H. Leffingwell, Mil-
16 ford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer, having formed said fraudulent scheme, device, and confederation, as aforesaid, they, or some one of them, or some one acting for them, did furthermore and in furtherance of the same, on or about the fourth day of June, 1883, write out and prepare, or cause to be written out and prepared, two certain affidavits, one of which was in substance and to the effect that no portion of the tract of land described as the southeast quarter of section thirty-two, township thirty-three, south of range sixty-three, west of the sixth principal meridian, and containing one hundred and sixty acres, was in possession of any other party; that the said Charles F. Schuman was twenty-one years of age, a citizen of the United States, and had never held nor purchased as an individual, or as a member of any association, lands under the laws of the United States relating to the sale of coal lands of the United States; that he, the said Charles F. Schuman, was well acquainted with the character of the said land and with each and every subdivision thereof, and had frequently passed over the same; that his knowledge of said land was such as to enable him to testify understandingly with regard thereto; that said land

contained large deposits of coal, and was chiefly valuable therefor; that there was not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there was not within the limits of said land, to his knowledge, any valuable deposits of gold, silver, and copper. And this affidavit was subscribed and sworn to by the said Charles F. Schuman on the fourth day of June, 1883, before Mark L. Blunt, register of your orator's land office at Pueblo.

17 The other of said affidavits was also then and there subscribed and sworn to before said register by the said William H. Leffingwell and the said Milford N. Wells, and it set forth in substance and effect that they, the said affiants, were and each of them was of lawful age, and that they were well acquainted with the said tract of land and with each and every legal subdivision of the same from having frequently passed over it; that their knowledge of said land was such as to enable them to testify understandingly with regard thereto; that the same was chiefly valuable for coal; that there was not, to their knowledge or to the knowledge of either of them, within the limits of said land, any vein or lode of quartz or other rock in place bearing gold, silver, or copper; that there was not within said limits to their knowledge any valuable deposit of gold, silver, or copper, and that they were not interested directly or indirectly in said land or any part thereof as owners or otherwise.

Your orator further showeth that after said affidavits had been written out, prepared, subscribed, and sworn to as aforesaid, and on or about the same day, to wit, June 4th, 1883, the said conspirators, or some one or more of them, or some one acting for them, presented said affidavits as subscribed and sworn to as aforesaid, at your orator's local land office at Pueblo, in the State of Colorado, and then and there filed said affidavits and made application in the name and on behalf of one Charles F. Schuman to enter and purchase the said tract of one hundred and sixty acres described in said affidavits as vacant coal land, under the statutes of the United States in such cases made and provided, and at the same time there was paid to the receiver of public moneys at your orator's local land office aforesaid, the sum of three thousand two hundred dollars as the

18 purchase price of said tract of land at twenty dollars per acre. And thereupon, and upon or about the date last aforesaid, the register of your orator's said land office did issue in duplicate a certain certificate to the said Charles F. Schuman in substance and to the effect that said Schuman had on that day purchased from said register the land aforesaid and at the price aforesaid, and that payment of such purchase price had been made in full as required by law, and further, that upon presentation of such certificate to the Commissioner of the General Land Office, the said Charles F. Schuman should be entitled to receive a patent for said tract of land. And your orator further showeth to your honors, that upon payment of said money and the issuance of said certificate the receiver of public moneys at your orator's said local land office did issue to said Charles F. Schuman, and did deliver to him or to said conspirators, or to some one of them, or to some one for him or them, in duplicate, a receipt which was in substance and effect an acknowledgment that said Schuman had paid the said receiver the said sum of three thousand two hundred dollars, and for the purchase price of the land aforesaid at twenty dollars per acre.

And your orator showeth that thereupon said register and receiver did forward all papers, affidavits, applications, and one of each said duplicate certificates and receipts, made and filed as aforesaid to your orator's general land office at the city of Washington, and did deliver the other of said duplicates to said conspirators or to some one of them, or to some one acting for them, such delivery purporting to be for and on behalf of the said Charles F. Schuman.

VI. Further complaining showeth your orator unto your honors, that the said T. J. Peter, Robert Savage, William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas
19 Winsheimer, having formed said fraudulent scheme, device, and confederation as aforesaid, they or some one of them, or some one acting for them, did furthermore and in furtherance of the same, on or about the fourth day of June, 1883, write out and prepare, or cause to be written out and prepared, two certain affidavits, one of which was in substance and to the effect that no portion of the tract of land described as the northeast quarter of section thirty-two, township thirty-three, of range sixty-three west of the sixth principal meridian, and containing 160 acres, was in the possession of any other party; that the said Thomas Winsheimer was twenty-one years of age, a citizen of the United States, and had never held nor purchased, as an individual or as a member of any association, land under the laws of the United States relating to the sale of coal lands of the United States; that he, the said Thomas Winsheimer, was well acquainted with the character of said land, and with each and every legal subdivision thereof, and had frequently passed over the same; that his knowledge of said land was such as to enable him to testify understandingly with regard thereto; that said land contained large deposits of coal and was chiefly valuable therefor; that there was not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there was not, within the limits of said land, to his knowledge, any valuable deposits of gold, silver, or copper. And this affidavit was subscribed and sworn to by the said Thomas Winsheimer on the fourth day of June, 1883, before Mark L. Blunt, register of your orator's land office at Pueblo.

The other of said affidavits was also then and there subscribed and
20 sworn to before said register by the said William H. Leffingwell and the said Milford N. Wells, and it set forth in substance and effect that they, the said affiants, were and each of them was of lawful age, and they were well acquainted with the said tract of land and with each and every subdivision of the same, from having frequently having passed over it; that their knowledge of said land was such as to enable them to testify understandingly with regard thereto; that the same was chiefly valuable for coal; that there was not, to their knowledge, or to the knowledge of either of them, within the limits of said land, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there was not, within said limits, to their knowledge, any valuable deposit of gold, silver, or copper, and that they were not interested, directly or indirectly in the said land or any part thereof, as owners or otherwise.

Your orator further showeth that after said affidavit had been written out, prepared, subscribed and sworn to, as aforesaid, and on or about the

same date, to wit, June the 4th, 1883, the said conspirators, or some one or more of them, or some one acting for them, presented said affidavits, as subscribed and sworn to as aforesaid, at your orator's local land office at Pueblo, in the State of Colorado, and then and there filed said affidavit and made application in the name and on behalf of one Thomas Winsheimer to enter and purchase the said tract of one hundred and sixty acres, described in said affidavits as vacant coal land, under the statutes of the United States in such cases made and provided, and at the time there was paid to the receiver of public moneys at your orator's local land office aforesaid, the sum of three thousand two hundred dollars as the purchase price of said tract of land, at twenty dollars per acre; and thereupon,

21 and upon or about the date last aforesaid, the register of your orator's said land office did issue in duplicate a certain certificate to the said Thomas Winsheimer in substance and to the effect that said Winsheimer had on that day purchased from said register the land aforesaid, and at the price aforesaid, and that payment of such purchase price had been made in full as required by law; and further, that upon presentation of such certificate to the Commissioner of the General Land Office the said Thomas Winsheimer should be entitled to receive a patent for said tract of land. And your orator further showeth to your honors, that upon payment of said money and the issuance of said certificate, the receiver of public moneys at your orator's said local land office did issue to said Thomas Winsheimer, and did deliver to him, or to said conspirators, or to some one of them, or to some one for him or them, in duplicate, a receipt which was in substance and effect an acknowledgment that said Winsheimer had paid the said receiver the said sum of three thousand two hundred dollars, as and for the purchase price of the land aforesaid, at twenty dollars per acre. And your orator showeth that thereupon said register and receiver did forward all the papers, affidavits, applications, and one of each of said duplicate certificates and receipts, made and filed as aforesaid, to your orator's General Land Office at the city of Washington, and did deliver the other of said duplicates to conspirators, or to some one of them, or to some one acting for them, such delivery purporting to be for and on behalf of the said Thomas Winsheimer.

VII. And further complaining showeth your orator unto your honors, that after said affidavits, certificates, and receipts in each of the entries of the said Robert Savage, William H. Leffingwell, Mil-

22 ford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer had been filed in your orator's General Land Office as aforesaid, the several duplicate receipts delivered, as aforesaid, to the said several entrymen, were presented at your orator's General Land Office and the issuance of a patent upon each of the above tracts to the party seeking to enter the same as aforesaid, was requested, and thereupon relying upon said affidavits and certificates, and trusting and believing that said coal lands were being legally entered and were being entered by each of said entrymen for his own individual use and benefit, and being totally ignorant of said conspiracy and the purposes of the same, did issue its patents for each and all of the above tracts of land which said patents purported to convey all of your orator's rights, title, interest, and estate in and to said tracts of land to the said Robert Savage, William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and

Thomas Winsheimer, respectively, and which said patents were thereafter delivered to said patentees, or to some one representing them and acting in their name.

Your orator alleges the fact to be that said tracts of land were not entered according to law, but in violation of the same; that the said Robert Savage, William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer did not enter said lands for their own use and benefit, nor for the use and benefit of any of them, but for the direct use and benefit of the defendant, the Trinidad Coal and Coking Company. That the said Robert Savage and other officers of said company, procured the said entrymen to go in a body to Pueblo to make their filings as aforesaid, and that all of said papers and affidavits
23 were drawn and prepared by officers of said company; that all the expenses of the said entrymen in going to the city of Pueblo to make said entries, were paid by the officers of said company acting for it and in its behalf, and that the entire purchase money for all of said tracts of land and all land-office fees, costs and expenses, were paid by the company. And further, your orator charges and alleges the fact to be, that immediately after the filing of said affidavits in said land office, and the pretended entries upon said tract of land, made by them as aforesaid, the said Robert Savage, William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer, and each of them, did execute and deliver to the defendant company warranty deeds conveying each and all said tracts of land to the defendant, who immediately entered into possession of said lands which has possessed and claimed the same thenceforth and until the present time; that no one of said entrymen has ever claimed or asserted any right or interest in said tracts of land, or any of them, by virtue of the fraudulent and illegal entries made by them as aforesaid. And your orator charges that said entries were each and all in reality and effect a purchase of said tracts of land by said company, and that the entries and purchases of the same by said Robert Savage, William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Schuman, and Thomas Winsheimer were but in pursuance of a scheme and device to evade the laws of the United States and to procure for said defendant company a greater amount of coal land than it could legally purchase and hold.

VIII. And further complaining, your orator alleges that the entries of coal land hereinbefore set out, having been really a purchase of said
24 lands by said defendant company as aforesaid, were also illegal for the further reason that prior to the fourth of June, 1883, the said T. J. Peter being an officer and stockholder of said defendant company, had, on, to wit, the fifth day of August, 1881, entered and purchased under the laws of the United States one hundred and sixty acres of vacant coal land, and other officers and stockholders of the said company, namely, Charles P. Teat, Joseph L. Prentiss, Orlando B. Wheeler, and others whose names are unknown to your orator, had purchased tracts of coal land of the United States, all of which said coal land entered and purchased by T. J. Peter and by other officers and stockholders of said company as aforesaid were, on the fourth day of June, 1883, held and owned by defendant corporation, and were in the aggregate in excess of three hundred and twenty acres of coal land. Wherefore your orator alleges that neither

said company nor any member or officer of same for its benefit or in its behalf could then legally enter or purchase any additional coal lands from your orator. And your orator further shows that on the——day of———, all of said tracts of land hereinbefore set out and described were conveyed by the said fraudulent entrymen to the defendant company, and your orator alleges the fact to be that said corporation at the time of the said conveyances had full notice of said fraudulent scheme, device, conspiracy, and confederation and of the fact that said lands were being entered and purchased for its benefit exclusively, and that such entry and purchase were illegal.

Forasmuch, therefore, as your orator is without remedy in the premises, save in a court of equity, and to the end that the said The Trinidad Coal & Coking Company may be required to make full and direct answer to each and all of the allegations in this bill contained but not under oath
25 (answer hereto under oath being hereby expressly waived), and that each and all of the patents hereinbefore set out and which were issued by your orator in the names of the said fraudulent entrymen may be set aside and declared null and void and of no effect, and may be delivered up and cancelled, and that the several deeds of conveyance from the parties in whose names said fraudulent entries were made, and all other deeds of conveyance subsequent thereto conveying the said several pieces and parcels of land hereinbefore described may be set aside and declared null and void and of no effect as against your orator as clouds upon the title of your orator, and that the same may all be delivered up to be cancelled, and that your orator may have such other and further relief in the premises as to equity belongs and as to your honors shall seem meet and proper:

May it please your Honors that the writ of subpœna in chancery issue, directed to the marshal of the United States for the district of Colorado, commanding him that he summon the said defendant, The Trinidad Coal & Coking Company, to appear before this court on a day in said writ to be stated according to law, then and there to answer all and singular the premises, and to stand to, perform, and abide by such order and decree herein as your honors may make, and as may seem agreeable to equity and good conscience.

And as in duty bound your orator will ever pray, etc.

(Signed) A. H. GARLAND,
Attorney-General.

(Signed) HENRY W. HOBSON,
U. S. Att'y, for Colo.

(Signed) BEN S. ROBBINS,
Asst. Dist. Att'y, of Counsel.

26 (Indorsed): 1270. In the United States circuit court for the district of Colorado. In chancery. The United States *vs.* The Trinidad Coal and Coking Company. Complaint. Filed Apr. 16, 1888. (Signed) William A. Willard, clerk. Henry W. Hobson, U. S. dist. attorney.

And the said subpœna is in words and figures as follows, to wit:

Subpœna.

The United States of America.

UNITED STATES OF AMERICA, *District of Colorado, ss:*

The President of the United States of America to the Trinidad Coal and Coking Company, greeting:

You are hereby commanded that you appear before the judges of the circuit court of the United States of America for the district of Colorado, at the city of Denver, in said district, on the first Monday in June next (it being the 4th day of June, A. D. 1888), to answer the bill of complaint of the United States of America this day filed in the office of the clerk of said court in said city of Denver, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said bill of complaint, upon pain of judgment being pronounced
27 against you by default and a decree had and entered accordingly.

To the marshal of the district of Colorado to execute and make due return.

Witness, the honorable Samuel F. Miller, Associate Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver, aforesaid, this 16th day of April, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the 112th year.

[Seal, cir. ct. U. S., dist. of Colo.]

(Signed) WILLIAM A. WILLARD,
Clerk,
By CHAS. W. BISHOP,
Deputy Clerk.

Memorandum.

The above-named defendant is hereby notified that unless it shall enter its appearance in the office of the clerk of said court at the city of Denver aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

(Signed) WILLIAM A. WILLARD,
Clerk.
By CHAS. W. BISHOP,
Deputy Clerk.

Marshal's return.

UNITED STATES OF AMERICA,
District of Colorado, ss:

28 DENVER, *June* 4, 1888.

I have duly executed the within writ, by delivering to Chas. E. Gast, the attorney of the said defendant company, who accepted service for the said company, the officers being non-residents and each of them, per-

sonally, a true copy of the within writ, at the place and time as follows, to wit: As to Chas. E. Gast, on the 4th day of June, A. D. 1888, at Denver in Arapahoe County.

This writ therefore returned executed as the law directs this 4th day of June A. D. 1888.

(Signed) ZEPH T. HILL,
Marshal.

I accept service of the within writ for the defendant company.

(Signed) CHAS. E. GAST, *Att'y.*

JUNE 4, '88.

(Endorsed): Gen. No. 2270. Circuit court of the United States for the district of Colorado. In chancery. The United States *vs.* The Trinidad Coal and Coking Company. Subpœna. Returnable to rule day, first Monday in June, A. D. 1888. (Signed) William A. Willard, clerk. Filed this 4th day of June, A. D. 1888. (Signed) William A. Willard, clerk, by F. W. Tupper, deputy clerk. H. W. Hobson, of Denver, compl't's sol'r.

And afterwards and on, to wit, the 7th day of August, A. D. 1888,
29 came the said defendant by Charles E. Gast, esq., its solicitor, and filed in said court and in said cause its demurrer to the complaint heretofore filed herein.

And the said demurrer is in the words and figures as follows, to wit:

Demurrer.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States in and for the district of Colorado.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TRINIDAD COAL AND COKING COMPANY, defendant. } In chancery, No. 2270.

The demurrer of the Trinidad Coal and Coking Company to the bill of complaint of the United States of America:

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not by its said bill made such a case as entitles it in a court of equity to any relief against this defendant touching the matters contained in the said bill or any of such matters, and particularly doth the said bill of complaint fail to allege any facts whereby it doth appear that the certain entries of coal lands therein recited,
30 or any of them, were fraudulent, illegal, or in contravention of law.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill. And it prays to be hence dismissed with its reasonable costs in this behalf sustained.

I certify that in my opinion the foregoing demurrer of The Trinidad Coal and Coking Company, defendant, to the bill of complaint of the United States of America, complainant, is well founded in law, and proper to be filed in the above cause.

(Signed) CHAS. E. GAST,
Solicitor.

UNITED STATES OF AMERICA,
District of Colorado, County of Pueblo, ss:

Charles E. Gast, being duly sworn, does depose and say that he is the solicitor of The Trinidad Coal and Coking Company, defendant, that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

(Signed) CHAS. E. GAST.

Subscribed and sworn to before me this 6th day of August, A. D. 1888.

[NOTARIAL SEAL.] (Signed) ALLEN J. BEAUMONT,
Notary Public.

31 (Endorsed:) No. 2270. United States circuit court, district of Colorado. United States of America *vs.* The Trinidad Coal & Coking Company. Demurrer to bill. Filed Aug. 7, 1888. (Signed) William A. Willard, clerk. Chas. E. Gast, att'y for def't.

And afterwards and on to-wit, the 11th day of January, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1888, of said court. Present: The honorable David J. Brewer, circuit judge; the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Demurrer sustained. Appeal prayed.

THE UNITED STATES OF AMERICA *vs.* THE TRINIDAD COAL AND COKING COMPANY. } In chancery 2270. Bill to cancel patents and for other relief.

At this day comes the said complainant, by H. W. Hobson, esq., district attorney.

And the demurrer of the said defendant, to the bill of complaint herein, having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now fully advised in the premises, it seemeth to the court now here, that the said bill of complaint and the matters and things therein alleged, is not sufficient in law and so the said demurrer is sustained.

Wherefore it is ordered, adjudged, and decreed, that the said bill of complaint be, and the same is hereby dismissed.

32 And thereupon the said complainant prays an appeal to the Supreme Court of the United States, which is allowed it.

UNITED STATES OF AMERICA, *District of Colorado, ss.:*

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the bill of complaint, subpœna, demurrer, and all orders of court heretofore filed or entered of record in said court, and in a certain cause lately in said court pending, wherein the United States of America was complainant, and The Trinidad Coal and Coking Company was defendant, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this seventh day of March, A. D. 1889.

[SEAL.]

WILLIAM A. WILLARD,
Clerk.

By F. W. TUPPER,
Deputy Clerk.

(Indorsed on cover:) No. 774. The United States, appellant *vs.* The Trinidad Coal and Coking Company. Colorado C. C. U. S. Filed April 13, 1889.

Office Supreme Court U. S.
FILED.
OCT 10 1890
JAMES H. MCKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
vs.
THE TRINIDAD COAL AND COKING Company. } No. 774.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE PLAINTIFF.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
vs.
THE TRINIDAD COAL AND COKING Company. } No. 774.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE APPELLANT.

This is a bill filed by the United States to cancel six patents issued pursuant to alleged pretended and fraudulent entries of coal lands, under sections 2347 and 2350 of the Revised Statutes.

The case made by the bill is, that up to and for a long time prior to June 4, 1883, the United States was owner in fee-simple of six several

tracts of land, which are particularly described in the bill (p. 1), and which, during the time mentioned, were vacant coal lands, situate in the county of Las Animas, in the State of Colorado, and contain in the aggregate 954.34 acres.

That on or about the day and date mentioned T. I. Peter and Robert Savage, officers and stockholders of the defendant corporation, and William H. Leffingwell, Milford N. Wells, Alexander Craigmyle, Charles F. Shuman, and Thomas Winsheimer, employés of said corporation, together with certain other officers and members of said corporation, whose names are unknown, entered into a fraudulent combination and conspiracy to obtain patents for vacant coal lands of the United States for the benefit and behoof of the said corporation, and to an amount exceeding 320 acres, contrary to the statutes of the United States.

That pursuant to the said combination and conspiracy, on or about the day and date mentioned, the said Robert Savage entered and purchased at the land office at Pueblo, Colo., 152.53 acres of said vacant coal land, paying there-

for the sum of $3,050.60; that the said William H. Lettingwell entered and purchased at the said land office 160 acres of said vacant coal land, paying therefor the sum of $3,200; that said Milford N. Wells entered and purchased at said land office 161.81 acres of said vacant coal land, paying therefor the sum of $3,236.20; that said Alexander Craigmyle entered and purchased at said land office 160 acres of said vacant coal land, paying therefor the sum of $3,200; that the said Charles F. Shuman entered and purchased at said land office 160 acres of said vacant coal land, paying therefor the sum of $3,200; that the said Thomas Winsheimer entered and purchased at said land office 160 acres of said vacant coal land, paying therefor the sum of $3,200; and that in pursuance of said entries patents were issued and delivered by the General Land Office to the said pretended entrymen for the tracts of land entered by them respectively.

The bill alleges that these entries were made in violation of law, in that the said pretended entrymen did not enter said lands for their own

use and benefit, but for the direct use and benefit of the defendant, the Trinidad Coal and Coking Company; that the said Robert Savage and other officers of the defendant company, in the language of the bill (p. 12):

> Procured the said entrymen to go in a body to Pueblo to make their filings as aforesaid; and that all of said papers and affidavits were drawn and prepared by the officers of said company, acting for it and in its behalf; and *that the entire purchase money for all of said tracts of land and all land-office fees, costs, and expenses, were paid by the company.*
>
> And further your orator charges and alleges the fact to be, *that immediately after the filing of said affidavits in said land office and the pretended entries upon said tract of land, made by them, as aforesaid, the said Robert Savage, William H. Leffingwell, Wilfred N. Wells, Alexander Craigmyle, Charles F. Shuman, and Thomas Winsheimer, and each of them, did execute and deliver to the defendant company warranty deeds conveying each and all said tracts of land to the defendant,* who immediately entered into possession of said lands, which has possessed and claimed the same thenceforth until the present time; that no one of said entrymen has ever claimed or asserted any right or interest in said tracts of land, or any of them, by virtue of the fraudulent and illegal entries made by them as aforesaid.

The bill charges that said entries were the result of a scheme to evade the law by procuring for the defendant company a greater amount of coal land than it could legally purchase and hold.

The bill then alleges that the entries aforesaid, being really the entries of the defendant company, were all illegal and void for the further reason that certain named officers and stock-

holders of the defendant company had theretofore made entries of coal land on their own individual account; that the land so entered exceeded 320 acres in amount, and had been conveyed to the defendant and was still held by it on the said 4th of June, 1883, when the entries complained of in the bill were made, and that the defendant company had full notice of the said fraudulent scheme, device, and confederacy resulting in entries complained of in the bill.

The bill prays that the said patents may be decreed to be null and void, and to be delivered up to complainant to be canceled as clouds on the title of said lands.

The defendant demurred to the bill (p. 15).

The court sustained the demurrer and dismissed the bill (p. 16).

From this decree the United States appealed (p. 16).

GROUND OF THE APPEAL.

The validity of the decree is assailed on the ground that a case is made by the bill which entitled the United States to a decree.

ARGUMENT.

This case arises upon sections 2347 and 2350 of the Revised Statutes of the United States, which are as follows:

> SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, *not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association*, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.
>
> SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and *no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof*; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upoa failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Section 2348 Revised Statutes, above referred to, gives a right of pre-emption to persons or associations who shall have opened and improved, or who shall thereafter open and improve any

coal mine or mines upon the public lands, and Section 2349 Revised Statutes, also above referred to, provides certain regulations under which the said right of pre-emption shall be exercised. These two sections, however, do not appear to have any application to the question raised by this appeal.

It thus appears that Congress, in opening coal lands to entry and purchase, has seen fit to do so under the following limitations and restrictions:

(1) The entryman must be above the age of twenty-one years.

(2) He must be a citizen of the United States, or have declared his intention to become such.

(3) No association of persons can make such entry unless each individual composing the association is qualified as above.

(4) No person can enter more than 160 acres.

(5) No association of persons can enter more than 320 acres.

(6) No person or association of persons can make more than one entry.

(7) No association of persons can make entry

if any one of its members has enjoyed the benefit of the law, either as an individual or as a member of any other association.

(8) No person can make entry who is a member of any association that has taken the benefit of the law.

When Lord Elden spoke of a transaction as "an insult to an act of Parliament," in Fox *v.* Bishop of Chester (1 Dow & C., 429), he described just such a transaction as this record presents.

The defendant was prohibited by the express words of the statute from entering more than 320 acres of coal lands. Disdaining, however, this restriction, the defendant abstained from making entry in its own name, but evasively entered in the names of individuals, who were its stockholders, tracts of coal lands, which, in the aggregate, greatly exceed the area of 320 acres, to which the statute restricts it. The costs of these entries, together with the personal expenses of the entrymen, and the purchase money, amounting to a large sum, were paid out of the treasury of the defendant, and so soon as the

entries were made these entrymen conveyed, respectively, to the defendant the lands covered by the entries, and the defendant, at once, went into possession under the deeds of conveyance.

Can such transactions stand under the statute?

Clearly the defendant had no right to make the entries complained of in the bill, because, before those entries were made several of the defendant's stockholders had entered coal lands exceeding 320 acres in quantity, and had afterwards conveyed them to the defendant, which has been in possession of them ever since.

Clearly the aggregate quantity of the tracts covered by the entries complained of, being 954.34 acres, was much in excess of the quantity (320 acres) that might have been covered by a lawful entry of the defendant, and therefore defendant had no right to make entries to that extent, either in its own name or in the names of others.

If the view of the statute sustained by the learned court below is correct, it would seem that the statutory restriction amounts to nothing, for all that an association of persons needs to do,

in order to engross the public coal lands to any extent it pleases, is to employ the necessary number of persons to enter and purchase the lands in their own names with the money of the association and then take conveyances from the pretended purchasers.

If the statute is not to be brought into contempt by being turned into an instrument of demoralization; if its restrictions as to the quantity of land that may be covered by an entry are to have any practical effect, then, it seems to us, that it must be held that the entry contemplated by the statute is *not a simulated*, but a *real* entry; in other words, that such entry *must be the independent act of the party in whose name it is made, and not in reality the act of some third person* for whom the entryman is a mere agent.

It is difficult to understand how an entry which is not really the act of the party who makes it, but the act of another, can have equal validity under the law with an entry made in good faith by the person appearing to make it.

It would seem clear that Congress meant something by putting a limit on the quantity of land

that an entry might cover, and we respectfully submit that an interpretation of the statute which serves to make the restriction in question senseless and inoperative should be rejected in favor of one that gives the law some effect by requiring that an entry, to be valid, must be the independent act of the party making it, on the recognized principle that we should incline to "such expositions of a statute as prevent its being eluded or frustrated." (Wilb. Stat., 65.)

No one will deny that the restriction in question at once becomes of some effect if we hold that a party can not legally be the assignee of a coal-land claim which the assignor entered by the assignee's procurement and direction and at his expense.

But the eminent judge of the court below did not see in the statute a purpose to put some limit on the power of corporations and individuals to grasp an undue share of the public coal lands He thought that as the individuals who lent themselves to the defendant corporation may have had a right to make entries of coal lands in their own names, for the bill alleged nothing to the contrary,

they had an undoubted power, under the law, to extinguish that right, by contracting it away to the defendant in the manner they did. He could see no legislative intent forbidding what they did, because the statute contained no words expressly prohibiting it. He thought that because the Government had received its full price for the lands it could have no reasonable ground to ask for the surrender and cancellation of the patents.

We give the language of the learned court, as we find it reported in 37 Federal Reporter, pp. 180–181:

> BREWER, *J.* The bill charges that defendant holds the title to six quarter sections of coal lands; that the entries were made and patents issued to six individuals, naming them, who immediately conveyed to the defendant. The purchase price and all expenses were paid by the defendant. It could not of itself purchase by reason of the fact that some of its members had exercised their full right to purchase. As it could not purchase directly, the contention is that it could not do indirectly that which it could not do directly, and that it could not through the instrumentality of these six individuals thus acquire title to these lands. There is nothing to show that these six individuals did not have the right to purchase; and the act of Congress gives a right to purchase to persons possessing certain qualifications, upon the payment of a certain amount of money, the maximum being $20 per acre, which was paid in this case. So that the parties who entered (the patentees) had the right to purchase, and the Government has received full pay,—the highest fixed price for the lands it has conveyed. While it may be true as a general proposition that a party may not do indirectly what he can not do directly, yet when a new factor enters into any transaction it is limited thereby. Now, the right to purchase existed in

these six individuals. They exercised that right, and it has gone; because, once exercised, it ceases. That is a new factor which enters into this transaction.

Again, this is not one of those entries of land in which the party must by the statute, act in his own behalf alone, and file an affidavit that he is not doing so for the benefit of others. No such provision exists in respect to the purchase of coal lands. A party purchasing may contract before his purchase to sell, and that contract may be enforced; and I know no reason why he may not contract away his right to purchase, it being a valuable right given by Congress, having some of the elements of property, and with no prohibition upon its sale. So that it amounts to this: that while the ultimate purchaser—the party who paid the money—is this defendant, which could not purchase directly, it is true that the Government has obtained full price for the lands, and also true that the parties in whose names the purchase was made lost by their purchase this property right given by the act of Congress. There is therefore a new factor in the transaction. Under these circumstances the Government can not claim that it has been defrauded or wronged by the purchase of these coal lands. The demurrer to the bill will be sustained.

The construction put upon the law by the General Land Office is opposed to that of the learned court below. In a case in which the defendant in this suit claimed the right to patents under entries of coal lands precisely like those now in question, the Acting Secretary of the Interior held that the entries had no validity under the law; that to concede validity to them would be to allow that to be done by indirection which can not be done directly. "In other words," said the Acting Secretary, "it would be to allow a corporation to acquire by purchase through agents, acting for the time being in

their own names confessedly as agents, that which it can not acquire by direct entry in its own name. This would be to encourage monopoly."

In a previous part of the same opinion he says:

> If this could be done for one or two entries it could be done for any number. The recognition of such a practice would enable one person or corporation, operating through nominal entrymen, who are in fact mere agents, to do what their principals can not legally do, to acquire under sanction of the Land Department an unlimited quantity of coal lands, or a quantity limited only by the extent of the coal field, or by the means or desires of the person or company for whose benefit they are to be made. (*Ibid.*, p. 373.)

The same ruling is to be found in 7 Land Decisions, page 422.

These decisions, made by the Department specially charged with the administration of the land laws, are, it is conceived, entitled to the consideration of this court in connection with the argument herein urged.

It is, with deference, submitted that there seems to be sufficient ground for the reversal of the decree.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
v.
THE TRINIDAD COAL AND COKING COMPANY.

No. 774.

BRIEF OF APPELLANT IN REPLY.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
v.
THE TRINIDAD COAL AND COKING COMPANY. } No. 774.

BRIEF OF APPELLANT IN REPLY.

There is urged in support of the decree an argument which claims to be founded on the pre-emption legislation of Congress, but which, we think, involves a serious misconception of the meaning and spirit of that legislation.

The argument is (defendant's brief, pp. 8–12) that until Congress declared, by the act of 1830 (4 Stat., 420), that "all assignments and transfers of the right of pre-emption given by this act prior to the issuance of patent shall be null and void," and by the act of 1838 (5 Stat., 257), that

the pre-emptor should swear that he had not made any agreement by which the title would inure to the benefit of another, it was perfectly competent, under then existing pre-emption laws, for any person entitled to exercise the right of pre-emption to bargain away and exercise that right for the benefit of another.

From this unfounded assumption it is concluded that, inasmuch as Congress has not guarded the right to enter coal lands in the way it has guarded the right to a preference claim to agricultural lands, the transactions complained of in the bill were perfectly valid.

Now, when we consider that the right of preemption, as it existed under several acts of Congress prior to the act of 1830, is given only "to every person or legal representative of every person, who has *actually inhabited and cultivated a tract of land, etc.*," it is going very far to say that anyone had a right to barter away this *mere privilege* under the law for the benefit of any speculator grasping after choice parts of the public domain not yet open to ordinary sale and entry.

It is difficult to see how such proceedings

could have validity under a law giving an unusual privilege for the purpose of inducing the permanent bona fide settlement and cultivation of the public lands.

The cases cited do not sustain the argument by any means.

It seems strange to hear it argued from the acts of 1830 and 1838, which were intended to correct abuses that had grown up under the pre-emption laws, that *those very abuses were perfectly valid under those laws!*

Under the old law, the difficulty, indeed the impossibility, where a bona fide purchaser was concerned, was to show that a pre-emptor had not acted in good faith; but because that difficulty existed and because it became necessary for Congress to require the pre-emptor to make an affidavit in witness of his good faith, besides giving other proof, are we at liberty to infer that the admitted abuses under the old law were *legal?* Especially in view of the language of this Court, in *Myers* v. *Croft* (13 Wall., 295), that—

> It had been the well-defined policy, in passing these [pre-emption] laws, not to allow their benefit to inure to the profit of land speculators, but this wise policy was often defeated.

Experience had proved that designing persons, being unable to purchase valuable lands on account of their withdrawal from sale, would procure middlemen to occupy them temporarily, with indifferent improvements, under an agreement to convey them so soon as they were entered by virtue of their pre-emption rights. When this was done, and the speculation accomplished, the lands were abandoned.

"*This was felt to be a serious evil,*" the Court goes on to say, which Congress undertook to remedy by the law requiring the pre-emptor to establish his good faith by affidavit.

It is true, that, in this case of *Myers* v. *Croft*, it is said in the opinion that the right to pre-empt land "was valuable, *and, independently of the legislation of Congress, assignable,*" but the case involved no such point, and it is conceived, and with deference submitted, that the learned judge, who was the organ of the Court, went, possibly, a little too far.

It is not denied that the right to pre-empt, when followed up by settling on a quarter section and cultivating it and putting improvements on it, in good faith, might, under the old law, before the act of 1830, have been assigned, but it is hardly reconcilable with what the court had previously said, in the same opinion, about the gross abuses under the old law to impute to it

the intention to say that those abuses were not in violation of law.

In cases like *Thredgill* v. *Pintard* (12 How., 24), where the original settler and all claiming under him have continuously occupied and cultivated the land and improved it in a permanent manner, the right to pre-empt was assignable as a valuable right, the conditions for entry and purchase already existing, and there being no appearance of fraud upon or evasion of the statute.

It is one thing to say that, after the pre-emptor had apparently proved up his claim, the difficulty in all cases, and the impossibility in the case of a bona fide purchaser, of showing a fraud upon the law secured a practical immunity to the abuses practised under the law, and it is quite another thing to say that the abuses, thus practised, *were in harmony with the law*. It was because those abuses could not be reached as the law then stood that additional laws were passed.

Another point is made, namely, that the demurrer was properly sustained because the bill

contains no offer, on the part of the complainant, to return the purchase money to the defendant as the condition of having the patents decreed to be void and to be delivered up for cancellation.

The answer to this point is that there is no law authorizing repayment of purchase-money after the granting of a patent.

The only legislation on the subject is that contained in sections 2362 and 2363 of the Revised Statutes and sections 1 and 2 of the act of June 16, 1880 (21 Stats., 287), which have no application to this case.

The Land Department has uniformly held that the money received in return for land can not be returned unless by authority of some law. When, as in this case, patents have been issued to the purchaser, and the purchase money has been covered into the Treasury, that none is beyond the reach of the executive branch of the Government. "After it has found its way into the Treasury, however," said Attorney-General Nelson (4 Op., 229, 230), "like all other money it should be withdrawn in strict fulfillment of the requirements of the law, which the administrative power

of the executive department of the Government can not control."

In *Shannon's Case* (4 Op., 254, 255), the same able jurist said:

> It is quite certain, assuming the contract of sale to have been one which the United States should not have consummated (and that is a question upon which the decision already acted on by the proper department precludes present inquiry), that the purchase-money now asked to be refunded should never have been received into the public treasury. It is there wholly without consideration, and is the money of Mr. Shannon, to which the United States have no claim, and to which he is unquestionably entitled. But who is to restore it to him? It can be withdrawn from the Treasury only by virtue of some law. I know of no enactment authorizing repayments, except that of 1825, which I have endeavored to show does not apply to this case.
>
> It will not do to say that the Department may refund simply because it is just that the money should be repaid, or that it is in the hands of the Government by mistake or without consideration. The same thing might have been predicated of the cases provided for by the act of 1825; and if in those cases the intervention of the legislative power was necessary, it seems to me to be equally so in this. The case of Mr. Shannon is unquestionably a hard one, and may evince the propriety of some general legislative provision, by which the Secretary of the Treasury may be clothed with authority to grant relief in like cases; but it can afford no warrant for the disregard by the Department of a most wholsome and salutary restraint, upon the due and strict observance of which the most important interests depend.

This follows from the constitutional provision that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." (Con., art. 1, sec. 9.)

However, then, it may be, in other cases, that the United States must itself do equity as a con-

dition of demanding it, the rule would seem to have no application to a case like this.

This court has held that it belongs to the Attorney-General of the United States, in virtue of his office, "to institute, in the name of the United States, a suit to abrogate, annul, or set aside a patent for land which has been issued by the Government in a case where such an instrument, if permitted to stand, would work serious injury to the United States and prejudice its interests; and where it has been obtained by fraud, imposture, or mistake" (*United States* v. *San Jacinto Tin Company*, 125 U. S., 284, 285), but the law has given no authority to the Attorney-General to offer, in a bill of that kind, to refund the purchase money for the land covered by the patent, which money has been already turned into the Treasury; and to say that he must do so is to say that the right to sue in such cases is a barren one, as the law now stands.

The defendant in such cases must be content with the assurance, which the Government's sense of honor gives, that it will, as promptly as its powers and methods will allow, refund the

purchase money if the patents in question should be decreed to be void.

As the law requires no suitor to do impossible things, it appears to be clear that this rule of equity invoked by the other side must be subordinated to the Constitution and laws of the United States.

Recurring now to the interpretation of the law under which the entries in question were made, it is to be observed, that the rigorous restrictions of section 2350 R. S., that no association of persons shall enter coal lands "*any member of which*" shall have entered such lands "*either as an individual or as a member of any other association*," and that no member of an association that has entered such lands shall "enter or hold any other lands" by virtue of this law, seem to have a strong tendency to show that Congress meant that *all restrictions* put on the right to make coal entries should be practically enforced and not evaded by a transparent device like that resorted to in this case.

It is respectfully submitted that there does not appear to be sufficient reason shown in the brief of the appellee why the decree should not be reversed.

WM. A. MAURY,
Assistant Attorney-General.

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1890.

THE UNITED STATES OF AMERICA, *Appellant*,
vs.
THE TRINIDAD COAL AND COKING COMPANY, *Appellee*.

No. 774.

APPELLEE'S BRIEF.

GEO. R. PECK,
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IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1890.

THE UNITED STATES OF AMERICA, *Appellant*,
vs.
THE TRINIDAD COAL AND COKING COMPANY, *Appellee*.

No. 774.

APPELLEE'S BRIEF.

THE United States filed its bill praying the cancellation of six certain patents for coal lands, embracing in the aggregate about nine hundred and fifty-four acres, the property of the Trinidad Coal and Coking Company.

It is alleged in general terms that the lands were entered fraudulently and pursuant to a conspiracy to cheat the Government; but with this general averment, which is mere inducement, we need have no concern, if the particular acts charged by which the title was acquired were not of themselves unlawful.

The several steps by which the Government was induced to part with its title are set out as follows: Each of the six entrymen filed in the local land-office his affidavit that no portion of the land he sought to enter was in the possession of any other person; that he was a citizen of the United States of the age of twenty-one years; that he had never held nor purchased, as an individual or as a member of any association, lands under the laws of the United States relating to the sale of coal lands; that he was well acquainted with the character of the land; that it contained large deposits of coal, and was chiefly valuable therefor; and that it did not contain any valuable deposit of gold, silver, or copper. In addition to this affidavit of the entryman, there was filed in each case an affidavit of two disinterested witnesses, corroborative of the above as to the character of the land and its being chiefly valuable for coal. Upon these proofs, the entries were allowed after payment of twenty dollars per acre, (the maximum price established by the Government for coal lands,) and patents issued in due course.

It is not pretended that these affidavits were false in any particular. Everything contained was strictly true, and honestly stated. There is no attempt to traverse them, and they stand unchallenged.

Nor is it pretended that they were in any respect a departure from the accustomed proofs prescribed by the Land Department in coal-land entries. No

regulation of the department was violated, no false statement made, no requirement omitted, and no deception of any kind practiced.

The fraud in the transaction is predicated solely upon this proposition: that the Land Department *had a right to believe* that each of these six entrymen was buying this land for his own use and benefit, whereas they were all employés of the defendant company, and in fact exercised their right of purchase in its behalf, under a previous agreement to convey the land.

The simple question is whether they may not do that.

I.

The law covering the sale of coal lands was passed in 1873, and is found in sections 2347 to 2351 of the Revised Statutes. For convenience in the discussion, we here set them out in full:

"SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per

acre for such lands as shall be within fifteen miles of such road.

"SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

"SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

"SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person, or association of persons; and no association of persons, any member of which shall have taken the benefit of such sections, either as an indi-

vidual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections, shall enter or hold any other lands under their provisions; and all persons claiming under section 2348 shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

"SEC. 2351. In case of conflicting claims upon coal lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections."

It will be seen from the foregoing that under section 2347, every citizen of the United States, over the age of twenty-one, has the absolute right to enter not exceeding one hundred and sixty acres of vacant coal land by paying a certain price per acre. Under proper regulations to be established by the Department, he need simply prove his citizenship, that the land is vacant and valuable for coal, and,

by paying the statutory price, he becomes entitled to a patent. No settlement or possession is required, no promise of development or improvement exacted; it is simply a cash transaction of barter and sale, which may be wholly speculative on the purchaser's part. Every citizen has this right, and the only limitations are that he can exercise it but once, (sec. 2350,) and to the extent of one hundred and sixty acres.

Under sections 2348 and 2349, he may acquire a preference right to enter the same quantity of coal land, by going into possession and improving it. That is to say, by developing the property and filing a claim for it within sixty days after taking possession he acquires a priority, which is respected for one year. His possession holds good for that period, and at its expiration he must either pay for the land or it is open to purchase by some one else.

None of the entries assailed in this proceeding, however, were of a preferential character. They were all made under section 2347, no previous possession or improvement being claimed or availed of by the applicants.

There is nothing in the letter of the section referred to, nor by construction can it be inferred from the act as a whole, that contemplates that the right of purchase must be exercised by the applicant for his own exclusive benefit. The right once exercised is gone; but like any other property right, unless there be a clear inhibition, it may be availed of

for another's advantage. *The form under which this is done is of no importance.* He may pay the Government with his own money, acting under a previous agreement to sell the land; or he may pay out the purchaser's money in the first instance, as was done in this case. In either case, the same result is reached. The Government is not defrauded; it gets its purchase-price, and the applicant for the land parts with his right of purchase.

Nor is there anything in the policy of the law, from whatever wide range it may be viewed, to make such transaction unlawful. Congress has not seen fit to restrict the sale of coal lands to actual occupants, who in good faith develop the property; in this its policy has been quite different from that established under the homestead and preëmption laws as to agricultural lands. Coal lands are offered to every citizen, and the door is thus necessarily left open to speculation. True, the quantity which any single person can buy is limited, but the same is true of all other mineral lands. A miner can include only a certain number of acres in his placer location, or a certain number of feet on a lode claim, and patents issue accordingly; but it is not the policy to restrict these mineral rights, so that they must be exercised solely in the claimant's own behalf. It is well that it is not so. For, as a matter of common observation, mining operations (particularly coal mining) to be successful must be conducted on a large scale. Tunnels, drifts, and

entries must be run, calling for a large amount of capital. The underground workings frequently extend for miles, and large holdings of land are necessary to insure economical development.

II.

If the course of land legislation be examined in connection with the decisions of this court relating thereto, it will be apparent that it was not intended to prevent one person from agreeing to sell coal land before he entered it, or from exercising his right of purchase for another's benefit.

One of the earliest laws providing for the sale of public land by private entry was passed by the Legislature of Virginia in 1779. It provided that persons who, before January 1, 1778, had marked out for themselves any waste or unappropriated lands, and built a house or hut, or made other improvements thereon, should be entitled to any quantity of land, not exceeding 1,000 acres, including such improvements, to which there was no adverse claim.

There was never a question that the right was transferable, and this court so held in *Sims vs. Guthrie*, 9 Cranch, 19.

The various preëmption laws passed from time to time, down to 1830, (Act of April 12, 1814, 3 Stat. at Large, 122; April 29, 1816, 3 Stat. 330; March 3, 1819, 3 Stat. 517; March 19, 1828, 4

Stat. 257,) were uniformly construed to permit a preëmptor to sell his right prior to making his entry.

Tridgill vs. Pintard, 12 How. 24.
Marks vs. Dixon, 20 How. 504.
Myers vs. Croft, 13 Wall. 291.
Lamb vs. Davenport, 18 Wall. 307.

When Congress established the policy of prohibiting such transfers, it was by positive legislation. The preëmption law of 1830 (4 Stat. 420) enacted that "all assignments and transfers of the right of preëmption given by this act prior to the issuance of patent, shall be null and void."

By the act of 1838 (5 Stat. 251) the preëmptor was obliged to swear that he had not made any agreement by which the title would inure to the benefit of another.

In *Myers vs. Croft*, 13 Wall. 291, this court, commenting upon the policy of Congress, speaks of the right of preëmption as "*valuable and independently of the legislation of Congress, assignable.*"

Under the timber-culture act of June 14th, 1878, (20 Stat. 113,) the right of entry is purely personal, and by express language must be for the exclusive use and benefit of the entryman. The same is true of the act of June 3d, 1878, authorizing the sale of timber and stone lands in California, Oregon, Nevada, and Washington. (20 Stat. 89.)

It will be seen that in all cases where Congress deemed it wise to prohibit *speculative* entries of

public lands of any character, they said so in express terms by making transfers or bargains for transfers prior to completion of the entries a ground of forfeiture, and by exacting sworn proof that the entryman was acting wholly in his own behalf. The whole history of land legislation and the decisions of this court were before Congress when the coal-land law of 1873 was enacted, and the absence of any provisions restricting the exercise of the right of purchase for the personal benefit of the entryman is conclusive that Congress intended a different policy to apply.

This will be still more apparent if we trace the legislation relating specially to coal lands. The first statute on the subject was an act for the disposal of coal lands and of town property in the public domain, approved July 1st, 1864. It was in the following language: "That where any tract embracing coal beds or coal fields, constituting portions of the public domain, and which as mines are excluded from the preëmption act of 1841, and which under the past legislation are not liable to private entry, it shall and may be lawful for the President to cause such tracts, in suitable legal subdivisions, to be offered at public sale to the highest bidder, after public notice of not less than three months, at a minimum price of twenty dollars per acre; and any lands not thus disposed of shall thereafter be liable to private entry at said minimum." Under this law, anyone could buy coal

land in any quantity, if he was the highest bidder at public auction, at a minimum price of twenty dollars per acre.

On March 3d, 1865, an act supplemental to the act of July 1st, 1864, was passed, which is as follows:

"That in the case of any citizen of the United States who, at the passage of this act, may be in the *business of bona fide, actual coal mining on public lands*, except on lands reserved by the President of the United States for public uses, *for the purpose of commerce*, such citizen, upon making proof satisfactory to the register and received to that effect, shall have the right to enter, according to the legal subdivisions, a quantity of land not exceeding one hundred and sixty acres, to embrace his improvements and mining premises, at the minimum price of twenty dollars per acre, filed in the coal and town-property act of July 1, 1864: *Provided*, That where the mining improvements and premises are on land surveyed at the passage of this act, a sworn declaratory statement descriptive of the tract and premises showing also the extent and character of the improvements, shall be filed within six months from the date of this act, and proof and payment shall be made within one year from the date of such filing; but where such mining premises may be on lands hereafter to be surveyed, and such declaratory statement shall be filed within three months from the return to the district land office of the official township plat; and proof and payment shall be made within one year from the date of such filings."

This supplemental act, as will be seen, gave a preference right to citizens of the United States, actually engaged in mining coal for commercial

purposes, to enter one hundred and sixty acres, embracing their improvements, at the minimum price of twenty dollars per acre. Coal land upon which mining operations were not carried on could still be offered at auction and sold to the highest bidder; and thus the law stood until the act of 1873.

All will doubtless agree that in the acts of 1864 and 1865 no policy is indicated at all analogous to that prevailing in the disposal of agricultural, timber or stone lands, where the purchaser is prohibited from using his right for another's benefit. Certainly if Congress intended to change this policy by the act of 1873, express and unmistakable language would have been used to manifest such intention.

III.

The practical construction given by the Interior Department to the act of 1873, at all times prior to this controversy, is in accord with our contention. The regulations established by the Department for the administration of the act show this, and in this connection are quite significant. Of course, it is not claimed that the court is bound by the construction of a law adopted by executive officers; but it is to be given some weight. Now, by referring to the circular instructions issued by Commissioner of the General Land Office, approved by the Secretary of the Interior, dated April 15, 1880, it will be seen that certain forms of affidavits

are prescribed in the proceedings to acquire coal-land titles. (Sickel's Mining Laws, 551.) Where the purchase is made under section 2347, the claimant makes an affidavit which was literally followed in the entries involved in this litigation. Where a preferential right is claimed, under sections 2348 and 2349, the same affidavit is required, *but with the additional statement that the claimant is in actual possession, and makes the entry for his own use and benefit, and not directly for the use or benefit of any other party.* We do not concede the right of the Department to exact such proof in any case. It is not supported by anything in the act; but the fact that in one class of entries, where a priority of right is given, such proof is demanded, and in the other class it is not—is a matter of some importance in dealing with this bill.

This construction of the act of Congress was adopted by the Supreme Court of Colorado, in *Lipscomb vs. Nichols*, 6 Col. 290, where it was held that a contract between two persons whereby coal land was to be entered by one for their joint benefit involved no fraud on the Government and was enforceable. The court say in the opinion: "Had "this agreement been made respecting the entry of "agricultural lands, this point in the demurrer "would not have been without force, but the act "relating to the entry and purchase of coal lands "on the public domain, contained in the chapter of "the Revised Statutes of the United States concern-

"ing mines and mineral lands, is wholly unlike the "laws governing the entry and acquisition of title "by occupants of agricultural lands."

The opinion of the Circuit Court in this case, delivered by the Circuit Judge, now Associate Justice BREWER of this court, is not embodied in the record, but is found in 37 Fed. Rep., p. 180, as follows:

"BREWER, J.: The bill charges that defendant holds the title to six quarter-sections of coal lands; that the entries were made and patents issued to six individuals, naming them, who immediately conveyed to the defendant. The purchase-price and all expenses were paid by the defendant. It could not of itself purchase by reason of the fact that some of its members had exercised their full right to purchase. As it could not purchase directly, the contention is that it could not do indirectly that which it could not do directly, and that it could not, through the instrumentality of these six individuals, thus acquire the title to these lands. There is nothing to show that these six individuals did not have the right to purchase; and the act of Congress gives a right to purchase to persons possessing certain qualifications, upon the payment of a certain amount of money, the maximum being $20 per acre, which was paid in this case. So that the parties who entered (the patentees) had the right to purchase, and the Government has received full pay—the highest fixed price for the lands it has conveyed. While it may be true as a general proposition, that a party may not do indirectly what he cannot do directly, yet when a new factor enters into any transaction it is limited thereby. Now the right to purchase existed in these six individuals. They exercised that right, and it has gone; because, once exercised, it ceases. That is a new factor

which enters into this transaction. Again, this is not one of those entries of land in which the party must, by the statute, act in his own behalf alone, and file an affidavit that he is not doing so for the benefit of others. No such provision exists in respect to the purchase of coal lands. A party purchasing may contract before his purchase to sell, and that contract may be enforced; and I know no reason why he may not contract away his right to purchase, it being a valuable right given by Congress, having some of the elements of property, and with no prohibition upon its sale. So that it amounts to this: that while the ultimate purchaser—the party who paid the money—is this defendant, which could not purchase directly, it is true that the Government has obtained full price for the lands, and also true that the parties in whose names the purchase was made, lost by their purchase this property right given by the act of Congress. There is, therefore, a new factor in the transaction. Under these circumstances, the Government cannot claim that it has been defrauded or wronged by the purchase of these coal lands. The demurrer to the bill will be sustained."

IV.

The theory of the bill, that these patents were conceived in fraud, is wholly groundless. The proofs were in every detail regular and in conformity with Departmental practice. They were strictly true in form and in substance, and there is not the slightest taint of fraud, actual or constructive, in the matters alleged. If the patents can be recalled, it must be not because of any fraud practiced in obtaining them, but because the Land Department

misunderstood or did not administer the law properly. Their circular instructions *invited these entries* and hundreds of others of a like character.

All of which leads up to this proposition: That the Government cannot equitably ask to have these patents vacated without offering to pay back the purchase-price. The United States, when it invokes active relief from a court of equity, is not exempt from the salutary principle that "one who seeks equity, must do equity." This maxim is of universal application; it governs courts of equity in administering all kinds of equitable relief.

> *Fosdick vs. Schall*, 99 U. S. 235, 253.
> *Matthews vs. Warner et al.*, 6 Fed. Rep. 461.
> Daniell's Chancery Pleading and Practice, 5th Am. ed., 386, 387, 562.

When the sovereign becomes a suitor, he submits his rights to settled judicial notions of morality and good faith, the same as a subject. Assuming that these patents should not have issued, the court proceeds as though they had never issued, and returns the parties to that situation.

If these patents can be avoided, it must be not because of any false proofs by the entrymen, not because of any material fact concealed which it was their duty to disclose, not because of any stamp of fraud in the transaction. It must be because the Land Department misunderstood the law, or administered it inadvertently. Can it be that this mistake on their part works a forfeiture of our

money, and that the Government can be restored its title while retaining the purchase-price? If so, then certainly the code of morality applying to Government transactions is quite different from that by which courts adjudge the rights of private parties.

Brent vs. Bank of Washington, 10 Pet. 596, 614, 615.
The Siren, 7 Wall. 152, 154.
United States vs. Hughes, 11 How. 552, 568.
Fifth National Bank vs. Long, 7 Biss. 502.
U. S. vs. Throckmorton, 4 Sawy. 42, 43, 59.
United States vs. Platt Coal & Coke Co., 18 Fed. Rep. 708.

In the case last above cited, which was a suit brought to recover lands fraudulently obtained and cancel the patent, a demurrer to the bill was sustained, the court, PARDEE, J., using this language:

"I cannot see how this case can be taken out of the general rule that the complainant should do equity. At all events, no case is made in the bill showing any state of facts from which the court can infer that the Government elects, or is entitled to claim, the sum paid to the receiver as a forfeiture. As the case stands, on the facts alleged, the demurrer should be sustained on this ground."

Two cases have been decided in this court in which it was held that the purchase-money need not be tendered back in the suit brought by the Government to cancel patent; but in both cases the decisions were based on exceptions to the general doctrine, and so declared by the court.

The first of these cases is *Moffat v. United States* (112 U. S. 24), and the court, by Mr. Justice FIELD, used this language:

"As to the position that no offer is made in the bills to return the scrip received for the land, only a word need be said. The pretended patentees, who are supposed to have given the scrip, being mere myths, having no actual existence, it would be idle to offer to return it to them; and for the same reason they can have no agents to act in their behalf."

This language is a clear acknowledgment of the rule for which we contend. The necessity of paying or tendering back the consideration received by the Government was obviated by the fact that the pretended patentees were mere myths, having no existence, and therefore incapable of receiving back the consideration. This is only saying that if they were not "mere myths," but were real flesh-and-blood persons, whose indentity was well known, that the Government would be bound, in seeking equity, to do equity; would be bound, when it asks to have the transaction annulled and wiped out, to pay back the money it had received under it.

In *The United States v. Minor* (114 U. S. 233), which was a suit brought to set aside and annul a patent issued to Minor under the preëmption law, Mr. Justice MILLER, delivering the opinion of the court, used the following language:

"With regard to the fourth, fifth, and sixth questions, we have no difficulty in holding that neither

the provisions of sec. 2262, Rev. Stat., nor the liability to indictment, nor the actual indictment and conviction of the defrauding party for perjury in such case as this, in any manner supersedes or debars the United States of the remedy by bill in chancery to vacate the patent obtained by such fraudulent practices. On the contrary, the provision of the section above mentioned, that the person who makes the false oath in the premises shall forfeit any money he may have paid for the land, answers in the negative the fourth question, namely, Is the United States bound to offer in the bill, in a case like this, to return the purchase-money? The statute declares it is forfeited, and, though the party may lose the land, he also loses his money as a penalty of his perjury."

The reason given by the court for holding that the purchase-money need not be tendered back, is based upon the language of the statute itself under which the preëmption was made. It was this statute, and not the general doctrines of equity, which enabled the court to answer the fourth question in the case in the negative. That statute (sec. 2662, Rev. Stat.) requires a certain oath to be taken by a preëmptor, and then provides: "And if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same." And so the court declared that by virtue of the statute, he lost his land, and his money as well. But why rest the decision upon the statute alone if under the general principles of equitable relief the Government could have canceled the patent and kept the money?

Now in the case at bar the statute contains no such provision; and by a familiar rule of interpretation the fact that Congress has declared that the money shall be forfeited in one class of entries and not in another, emphasizes the position we have taken. It would have been easy, had Congress desired to place entries of coal lands on the same footing as entries under the preëmption act, to have made similar provisions; and the fact that Congress did not do so shows that it did not intend to do so. The provision in the preëmption law forfeiting the purchase-money for fraud was inserted because without such a provision it would not be forfeited, and its omission from the statute providing for the purchase of coal lands significantly attests the proposition that, in the absence of statutory declaration, the Government cannot cling to the money while insisting that the transaction under which it was received shall be declared void.

A. J. Britton
A. D. Browne

GEO. R. PECK,
CHAS. E. GAST,
Solicitors for Appellee.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

137/17

No. 345. 55

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, APPELLANT,

vs.

THE TEXAS CENTRAL RAILWAY COMPANY; THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE, AND THE METROPOLITAN TRUST COMPANY OF THE CITY OF NEW YORK, TRUSTEE.

FILED JULY 2, 1887.

No. 349. 59

THE TEXAS CENTRAL RAILWAY COMPANY, APPELLANT,

vs.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY; THE FARMERS' LOAN AND TRUST COMPANY, TRUSTEE, AND THE METROPOLITAN TRUST COMPANY, TRUSTEE.

FILED JULY 13, 1887.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

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MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, APPELLANT,

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FILED JULY 13, 1887.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

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1 *Caption.*

The United States Circuit Court, Fifth Circuit, in and for the Northern District of Texas, at Waco Sitting.

Be it remembered that at a term of the circuit court of the United States, 5th circuit, for the northern district of Texas, held at Waco, for the April term, A. D. 1887, Hon. Don A. Pardee, circuit judge, presiding, among other the following proceedings were had:

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE Farmers' Loan and Trust Company, as Trustee, and the Metropolitan Trust Company of the City of New York as Trustee.	Original Bill. In Equity. No. 21.
THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company.	Cross-Bill No. 33.

2 United States Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY.	No. 21. Equity.

Bill of Complaint.

Farrar & Kruttschnitt, counsel and solicitors for complainant.

Filed April 2, 1885.

J. H. FINKS,
Clerk U. S. Circuit Court, N. D. Texas.

3 To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and northern district of Texas:

Morgan's Louisiana & Texas Railroad and Steamship Company, a body corporate under the laws of the State of Louisiana and a resident and a citizen of said State, in its own behalf and on behalf of all other persons similarly situated who may intervene in this suit to protect their interests, brings this its bill of complaint against the Texas Central Railway Company, a body corporate under the

laws of the State of Texas, a resident of this district, and a citizen of said State of Texas.

And thereupon your orator complains and says:

I. That the Texas Central Railway Company is a body corporate under the laws of the State of Texas, organized and incorporated under the general laws of said State on the 31st day of May, 1879.

II. That the objects and purposes of said company, as originally incorporated, was to construct, build, and operate a railway in the State of Texas, which was to extend from Ross station, in McLennan county, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche, to or near the centre of Eastland county, a distance of about one hundred and thirty miles.

4 III. That on or about the twelfth day of May, 1881, the said Texas Central Railway Company, in pursuance of the laws of the State of Texas, amended its charter so as to authorize it to extend and construct its railway from its then terminus near the centre of Eastland county through the counties of Eastland, Callahan, Stephens, Shackelford, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of Texas, a distance of about three hundred and seventy-five miles; also to construct a branch railway from the company's main line at Whitney, in Hill county, through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie, to a point on Red River, in Bowie county, east of the eastern boundary line of Indian Territory, a distance of about two hundred and thirty-five miles; also to construct a branch railway from a point in Hopkins county on the line of the proposed railway from Whitney to the point on Red River, in Bowie county, through the counties of Hopkins, Delta, and Lamar, to a point on Red River, in Lamar county, near the mouth of Boggy river, a distance of about sixty-five miles.

IV. That under its said acts of incorporation the said Texas Central Railway Company has built and is now the owner of the

5 following-described railways, amounting, in the aggregate, to about two hundred and twenty-eight miles of railway in active operation, to wit:

1st. A line of railway from Ross station, in McLennan county, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, and Stephens to Albany, at or near the centre of Shackelford county, a distance of about 176 miles.

2d. A line of railway from Garrett, in the county of Ellis, through the counties of Ellis, Kaufman, and Hunt to Roberts, in the southern part of said county of Hunt, a distance of about 52 miles.

V. That the said railway company is also the owner of certain town lots acquired by it, by purchase or otherwise, on the lines of its said railways and of the following equipment, to wit: Eight locomotives, six passenger cars, three baggage cars, seventy box cars, and one hundred flat cars.

VI. That on or about the 15th day of September, 1879, the said

Texas Central Railway Company executed a deed of trust to the Farmers' Loan and Trust Company of the City of New York, in the State of New York, as trustee, by which said deed of trust the said Texas Central Railway Company declared in substance as follows: That for the purpose of defraying the expenses of constructing, building, and putting into operation a railway in the State of Texas, to extend from Ross station, in McLennan county, as aforesaid, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a
6 distance of about 130 miles, said railway company had resolved to issue and negotiate a series of bonds of one thousand dollars each, at the rate of fifteen thousand dollars to each mile of road, all of said bonds to bear date the 15th day of September, 1879, and made payable to the Farmers' Loan and Trust Company of the City of New York or bearer thirty years after November 1st, 1879, at the agency of said company, in the city of New York, with interest from date at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupon, the principal and interest of said bonds being payable in gold coin of the weight and fineness fixed by the laws of the United State in force at the date of issue, and which bonds were also exempted from any income tax then or thereafter to be levied or provided for by any law of the United States; and that in order to secure said bonds so to be issued by the said company, and the interest to become due thereon, said company did bargain, sell, convey, transfer, and confirm unto said trust company, its successors and assigns, all and singular the railway, built and to be built, beginning at Ross station, in McLennan county, as aforesaid, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a distance of about 130 miles, together with all side tracks, turn-tables, rolling stock, equipment, and materials, all rights of way and tracks, depot, and shop grounds, tenements, hereditaments, rights, and franchises, includ-
7 ing and meaning to include all the property, real and personal, then belonging to or which might thereafter be acquired by the said company in the State of Texas used for and pertaining to the operation of the said railway; that the said railway and other property was so conveyed to said trust company in trust for the owners and holders of said bonds or any of them, and provision was made in said deed of trust that the said railway and other property should remain in the possession, control, and management of the directors of said company so long as said company should well and truly perform all and singular the stipulations of said bond and of said deed of trust, and provision was made by said deed of trust that upon default in payment of the principal or any part thereof or any of the interest on any of said bonds, and upon continuance of said default for a period of sixty days after demand, then and thereupon the principal of all of said bonds should be and become immediately due and payable, and upon the request of the holder or holders of seventy-five per cent. of the bonds then

outstanding, to be made in the manner prescribed in said deed of trust, said trustee was by said deed authorized to take actual possession of said railway, to manage and operate the same, and to receive all the income and profits of the same, together with all the books, papers, records, accounts, and money of said railway company, and to apply the same, after payment of expenses of the road and needful repairs and the management of said trust, to the payment of the principal and interest of all the bonds which might be due and outstanding and secured by said deed
8 of trust, and provisions being further made in said deed of trust for the sale of said railway and other properties in the manner and form specially described and set forth in said deed of trust; that provision was also made by the said deed of trust for the creation of a sinking fund, for the investment of the same, and for the manner in which said bonds should be issued in proportion as the completing of said road should progress, and that said deed of trust also contained other and customary clauses in reference to registration of bonds, appointment of successors in trust, and other customary clauses; all of which, with other particulars, will more fully appear from a duly certified copy of said deed of trust and of one of the bonds thereunder issued, which is hereto annexed and made part of this bill, marked Complainant's Exhibit No. 1.

VII. That of said bonds authorized to be issued by the said deed of trust there have been issued and are now outstanding bonds to the amount of $2,145,000.

VIII. That thereafter, to wit, on the 16th day of May, A. D. 1881, after the amendment of the charter of said railway company, as hereinabove set forth, said railway company entered into a contract and deed of trust with the Farmers' Loan & Trust Co. of the City of New York, whereby said railway company declared that for the purpose of meeting the expense of constructing, building, and putting into operation the extension of its said railway and of its branch line authorized to be constructed by said amendment to the charter, and for
9 the purpose of exchanging and retiring the series of bonds hereinabove described to the amount of $2,145,000, which are secured by the hereinabove-described mortgage on the railway from Ross, in McLennan county, to the town of Cisco, in Eastland county, a distance of 143 miles, said company had resolved to issue and negotiate a series of bonds of $1,000 each, at the rate of $15,000 to each mile of road, all bearing date May 16th, 1881, and payable to said trust company or bearer on the 1st of May, 1911, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, and that in order to secure the prompt payment of the principal and interest of the bonds so to be issued the said railway company did by the said deed of trust grant, bargain, sell, convey, transfer, and confirm to said trust company, its successor, successors, and assigns in said trust forever, all and singular the main line of said Texas Central Railway Company's railway, built and to be built, beginning at the town of Ross, in McLennan county,

extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackelford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas, between the 101st and 102d meridian of west longitude, a distance of about three hundred and seventy-five miles; and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River, in Bowie county, east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; and also all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county on the said company's branch line of railway from Whitney to Red River, in Bowie county; thence through the counties of Hopkins, Delta, and Lamar to a point on Red River, in Lamar county, near the mouth of Boggy river, a distance of about sixty-five miles, together with all side tracks, turnouts, rolling stock, equipments, and materials, all rights of way and tracks, depot and shop grounds, tenements and hereditaments, rights, and franchises, including and meaning to include all the property, real and personal, then acquired or which might thereafter be acquired by the said company in the State of Texas used for and pertaining to the operation of the said railway as therein described: Provided, That nothing therein contained should create any lien upon the lines of railway that the Texas Central Railway Company might thereafter acquire or construct not included in the said extended line or branches herein described, nor upon the equipments, appointments, appurtenances, revenues, property, real or personal, rights, and franchises of said railway thereafter to be constructed and acquired as aforesaid.

And that by the said deed of trust provision was made in the manner and form customary for the continuance in possession of said railway company until breach of the stipulations of the said bonds and of the covenants of said deed of trust, and for the entry of said trustee, and for the management by the said trustee of said railway, and for the sale of the same in case of default in payment of the principal or interest of said bonds, and for the retirement and exchanging of said series of bonds of $2,145,000 for an equal amount of bonds to be issued under said deed of trust of May 16th, 1881, and that the said deed of trust contained other clauses usual and customary in such deeds; all of which, with other necessary particulars, will more fully appear from a duly certified copy of said deed of trust annexed to and made part of this bill of complaint and marked complainant's Exhibit No. 2.

IX. That under said deed of trust bonds to the amount of $1,254,000 have been issued and are now outstanding.

X. That thereafter, to wit, on or about the — day of October, 1884, said Texas Central Railway Co. made and entered into a certain deed of trust with the Metropolitan Trust Co. of the City of New York, whereby said railway company recited the existence of the deeds of trust and the issue of the bonds hereinabove
12 described and declared that it was about to execute and to issue from time to time certain bonds, to be known as "general-mortgage bonds" of said company, and that for the purpose of securing the payment of said bonds, with the interest to accrue thereon, it did grant, bargain, sell, alien, remise, release, convey, and confirm unto the said trust company and its successors and assigns forever all its railways and railway lines, whether constructed or to be constructed, and all their appurtenances, including therein all such lands and rights of way, superstructure, rails, tracks, side tracks or sidings, bridges, buildings, fences, depots, station-houses, shops, warehouses, car-houses, engine-houses, machine shops, repair shops, buildings, erections, and structures as might be necessary to the operation of said railways or said railway lines, and all and singular the rolling stock, equipment, and machinery appertaining thereto, whether then owned or thereafter to be acquired, and also all the rents, issues, tolls, incomes, earnings, and profits of such railways and railway lines, and also all the rights, privileges, immunities, and franchises relating or pertaining to such railways or railway lines which the said railway company possessed, owned, or was entitled unto or it or its successors might thereafter become possessed of or entitled unto, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said railway company and its successors of, in, and to the premises and every part and parcel thereof, with the appurtenances.

13 That the issue of bonds under said deed of trust was limited to an aggregate of ten thousand dollars per mile for each mile of railway theretofore constructed, and subject to the mortgage of date May 16th, 1881, and to an amount of $25,000 for each mile of railway thereafter to be constructed, and not subject to said mortgage of May 16th, 1881.

That the said deed of trust also contains other customary clauses, all of which will more fully appear from a duly certified copy of said deed of trust hereto annexed and made part thereof and marked Complainant's Exhibit No. 3.

XI. That although said deed of trust was executed in October, 1884, and has been recorded in all the counties into which the said road has been actually built, and all of the bonds which said railway company was authorized to issue under said mortgage have actually been signed and sealed, yet, owing to the number of counties of the proposed lines named and set forth in the charter in which the same had to be recorded, and the difficulty of communication in the State of Texas, the same has not yet been recorded in all of said counties, although your orator is informed and believes the said recording is in progress, and that the trustee under said deed refused and refuses to certify bonds thereunder until said recording shall have

been completed, and that said Texas Central Railway Co., finding itself in great financial embarrassment and requiring pecuniary assistance, and being already indebted to the Houston &
14 Texas Central Railway Company in a very large amount, did obtain further advances from said Houston & Texas Central Railway Company, making, with amounts theretofore loaned to it by said Houston & Texas Central Railway Company, a total indebtedness from the Texas Central Railway Company to said Houston & Texas Central Company of $761,992.04, and that, for the security of said advances then and theretofore made by said Houston & Texas Central Railway Company to said Texas Central Railway Company, said Texas Central Railway Company did, on the 1st day of November, 1884, make and execute its sixteen certain promissory notes, fifteen thereof for the sum of $50,000 each, and one thereof for the sum of $11,992.04, and for the security of each of said $50,000 notes said Texas Central Railway Company did pledge to said Houston & Texas Central Railway Company 150 of its said general-mortgage bonds, and for the security of said note of $11.992.04 said Texas Central Railway Company did so pledge thirty-six of its said general-mortgage bonds, thus making pledge of a total amount of general-mortgage bonds of $2,286,000, being the total amount of said general-mortgage bonds which said Texas Central Railway Company was authorized to issue for the length of the road already built by it; that all of said notes were dated November 1st, 1884, and all due on demand; that due demand has been made for payment of said notes, but that said Texas Central railway has refused and failed to pay the same; that in order to make a pledge of said bonds, which were not yet countersigned and
15 certified by said trustee, said Texas Central Railway Company did issue and deliver to said Houston & Texas Central Railway Company its certificates or obligations in lieu of said bonds, obligating itself to deliver said bonds as soon as executed and signed by said trustee to said Houston and Texas Central Railway Company.

XII. That said Houston & Texas Central Railway Company did pledge said notes of said Texas Central Railway Company, together with the certificates for the bonds securing the same to complainant as part security for an indebtedness exceeding one million of dollars due by said Houston & Texas Central Railway Company to complainant, and that complainant is now the holder, as pledgee, of all of said notes of said Texas Central Railway Company, as also of the certificates for the bonds securing the same.

XIII. Now, your orator further avers that, although said trustee refuses to issue said bonds, and although said deed of trust has not yet been recorded in all of said counties, yet the same, together with said certificates for bonds thereunder to be issued, constitutes a full, complete, perfect, and equitable mortgage and a lien upon said railway and upon all of the property, incomes, tolls, profits in said deed of trust described in favor of the holder or holders of said notes aforesaid and of said certificates for bonds.

16 XIV. And your orator, further complaining, says that the sums of money so advanced by said Houston & Texas Central Railway Company to said Texas Central Railway Company were advanced to said Texas Central Railway Company at various times for taxes, fuel, supplies, labor, repairs, operating and managing expenses, proper equipment, and useful improvements and other necessary expenditures by which defendant's railway has been kept in safe running order, its business and importance increased, and thereby rendered more beneficial to the bondholders under the various mortgages hereinbefore described and to all other creditors of said company; that the sums so advanced amount as aforesaid to $762,000 or thereabouts.

XV. Your orator further avers that the said indebtedness was contracted by the defendant upon the consideration of its promise to pay the same out of the earnings of its railway, and that the said indebtedness was and is, in equity and good conscience, a first lien and charge upon the income and property of said railway, but that the said defendant, instead of paying the debt so justly due to your orator out of the earnings of said railway, has utterly failed to pay the same or any part thereof; and that your orator is informed and believes and so charges that the said defendant has used a large amount, at least five hundred thousand dollars, of said earnings during the years 1882, 1883, and 1884 for the payment of coupons upon its first-mortgage bonds hereinabove described, although the holders of said coupons were only entitled to receive payments thereof
17 after the defendant had paid your orator the amounts advanced and expended in the manner and for the purposes hereinabove set forth.

XVI. Your orator further avers that the certificates for bonds which it has received and holds as collateral security as aforesaid and said bonds when issued are and will be greatly depreciated in value and become of no worth as security to your orator unless the relief hereinafter sought is obtained from your honors, and any effort to foreclose your orator's pledge will result in imposing a debt of $2,286,000 upon said defendant without any adequate relief to your orator, and that the said defendant company has no property, so far as your orator has knowledge, information, or belief, upon which to levy any execution upon any judgment that might be obtained against said defendant save and except the properties mortgaged to secure the various bonds and securities hereinabove described, and that any levy of execution upon said properties upon any judgment that might be obtained against defendant by your orator, or any sale of said property in block under such execution, as is required by the laws of the State of Texas, subject to the various liens and incumbrances hereinabove described and set forth anterior to your orator's mortgage, would be utterly ineffectual, for the reason that the rights to be acquired by the said purchaser at said sale would be left in so great doubt and uncertainty that no purchaser could be found for the same at an adequate price.

XVII. Your orator, further complaining, says that the
18 said Texas Central railway is in embarrassed circumstances;

that part of its pay-rolls for the month of January, 1885, and all of its pay-rolls for the month of February, 1885, are unpaid; that those for March, 1885, when due, will not, as your orator is informed and believes, be paid; that many claims are outstanding against said company which are unpaid, and that the said pay-rolls aggregate the sum of $20,000 or thereabouts; that the said company has no money in its treasury, no credit upon which to raise any money; that it has no supplies, no fuel nor material; that many suits are pending against it, and will, your orator fears and believes, soon ripen into judgments in the State courts of the State of Texas for large amounts of money; that the receipts of said railway have been gradually growing less and less, and that there is no hope of their increase in the immediate future; that your orator is informed and believes and charges that the said railway company will default upon the interest of all its mortgage bonds due May 1, and that the present gross total earnings of said railway company are not even equal to its running and operating expenses and reasonable maintenance; that the said railway is in fair condition, but that it runs through a new and undeveloped country and one in which great financial depression exists at the present time, and that unless said railway be administered in such a manner as to maintain it with unimpaired efficiency during this period of depression, its assets will be sacrificed without any adequate benefit to any of its creditors.

19 XVIII. That the financial embarrassments of said Texas Central Railway Company and the impossibility of further defraying its running expenses from its revenues are aggravated by the fact that the said Texas Central Railway Company was originally built relying on business connections with the Houston & Texas Central Railway Company; that the said Texas Central Railway Company was always managed and operated in connection with said Houston & Texas Central railway; that it has no round-houses or repair shops; that its maintenance and transportation business has always until recently been conducted entirely by the officials of the operating department of said Houston & Texas Central Railway Company without any additional expense to said Texas Central Railway Company, although your orator is informed and believes that its books have been kept and its corporate fuctions exercised as an independent corporation, but that said Houston & Texas Central Railway Company has lately been placed in the hands of receivers by an order and decree of the honorable the circuit court of the United States in and for the fifth judicial circuit and eastern district of Texas, in suit No. 185 of its equity docket, entitled The Southern Development Co. *vs.* Houston & Texas Central Railway Company; that the result of said receivership has been to deprive said Texas Central railway of its former operating officials and of the benefit of the harmonious business relations formerly existing with said Houston & Texas Central Railway Company.

20 XIX. And your orator further avers that the interdependence of said two railways upon each other has been such that it is to the vital interest of said Houston & Texas Central Rail-

way Company and of said Texas and Central Railway Company that the said interdependence shall be maintained.

XX. That the said Houston & Texas Central Railway Co. owns over one-third of the capital stock of said Texas Central Railway Co.,' and that the said Houston & Texas Central railway is also obligated, as aforesaid, for said indebtedness of $761,992.04 pledged by it to your orator, and that it is of vital importance to both of said roads that the management of the two should be under one common head.

XXI. Your orator further avers that in the foregoing condition of affairs the only manner in which your orator can obtain satisfaction of its said claims from said defendant is through the interposition of this honorable court and the appointment of one or more receivers for the whole of the above-described property of the said Texas Central Railway Company, defendant herein, with authority and instructions to conduct and administer the same according to its destination, and to collect and receive all the revenues, tolls, profits, and income of the same of every kind and nature, and for paying out of the same the cost of the administration and operating expenses and outlays for necessary equipments and repairs, and to apply the balance thereof to the payment of your
21 orator's said claims and to the payment of the claims of such other persons similarly situated as may intervene herein to protect their interests.

XXII. That it is a matter of vital interest, not only to your orator, but to all the lien creditors of said railway company and to all others in interest in said property, that the same should not be dismembered, and that the only chance which your orator has of ever being able to collect its debts from said defendant corporation consists in the maintenance of the unity and efficiency of said property, and the only means of obtaining the management of said property as a whole and the disposal thereof as a whole, and of preventing the dismemberment and preserving the integrity thereof, is by no means of a receivership as aforesaid.

XXIII. That owing to the interdependence of said two railways it is eminently proper and of vital interest to both of said roads that the receivers of the two should be the same, so that the traffic arrangements heretofore existing between said two companies may continue to be carried out, whilst keeping the accounts of the two companies separate, and that the revenues of said Texas Central Railway Company are so small that it is to the interest of all parties concerned that the expenses and complication of an independent receivership should be avoided; that the necessities of said Texas Central railway are so urgent that unless immediate means be taken to relieve its financial embarrassments there is great danger that the operations of said railway company be entirely stopped, its
22 duties to the public and to the State of Texas, under its charter, left unfulfilled, and serious danger incurred of damages to individuals or of a forfeiture of its charter by reason of the failure of said corporation to fulfil its corporate functions; that your orator fears and believes that the non-payment of said pay-rolls and the doubt of paying the same in future will cause all of the employees

of said company to leave its service, and that it is absolutely impossible that the said railway should continue its functions without the interposition of this honorable court, as hereinafter prayed for.

XXIV. That the Farmers' Loan and Trust Company, trustee of said first mortgage, is a citizen of the State of New York and not to be found in this district, and that your orator is therefore unable to make it a party thereto, but said trustee has interests which are to a great extent identical with those of complainant, and that by reason of the non-residence, and the fact that it cannot be found in this district, your orator is now unable to make it a party herein, but that your orator desires that it be made a party hereafter by service of the process of this honorable court, if it should come within this district or otherwise, in such manner as is customary and according to the practice of this honorable court and the laws of the United States in such cases made and provided.

XXV. That said Metropolitan Trust Company, trustee under said general mortgage, is also a citizen of the State of New York and
23 not to be found in this district; but your complainant is the sole beneficiary under said deed, and has no right to claim the action of said trustee in the premises, for the reason that the said trustee has as yet issued no bonds under said deed of trust, does not recognize complainant as holder of any of said bonds, but that complainant's contract is soley with said railway company, and not with said trustee, and that the complainant is therefore entitled to bring this bill for the protection of its equitable mortgage and lien without demand upon said trustee.

XXVI. Your orator further avers that Charles Dillingham, of the city of New Orleans, and Benjamin J. Clarke, of the city of New York, are the receivers of said Houston & Texas Central Railway Co., and the said receivers are, as your orator is informed and believes, willing to accept the receivership of said Texas Central Railway Company, if your honors should be pleased to name them as such receivers, and that they are ready and willing to give such bond as your honors may order.

To the end, therefore, that the said defendant may, if it can, show cause why your orator should not have the relief prayed for, and may upon its corporate oath, according to the best and utmost of its knowledge, remembrance, and information and belief, full, true, and perfect answers make to the matters herein set forth, your orator prays that the most gracious writ of subpœna may issue, directed to the said Texas Central Railway Company, commanding it to appear in this honorable court upon a day to be named therein
24 and abide the judgment of the court in the premises; and your orator further prays that this honorable court will, upon due notice and after hearing of the Texas Central Railway Company, appoint one or more receivers, with proper and sufficient bond, to enter into and take possession of—

(1.) The said line of railroad from the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, and Callahan

to a point at or near Albany, in the county of Shackelford, about one hundred and seventy-two miles.

(2.) The said line of railroad beginning at Garrett, in the county of Ellis, State of Texas, extending through the counties of Ellis and Kaufman to a point at or near Roberts, in the southern part of Hunt county, in said State, about fifty-two miles.

Together with all side tracks, turn-outs, rolling stock, equipments, and materials, all rights of way, and tracks, depots, and shop grounds, tenements, hereditaments, rights, franchises, including and meaning to include all the property, real and personal, belonging to the said company in the State of Texas used for and pertaining to the operation of said railway.

Also all the rent, issues, incomes, tolls, profits, moneys, rights, benefits, and advantages derived or to be derived, had or received therefrom by the said railway company in any way whatever.

And also all and singular all town lots, by gift, purchase, or otherwise and now owned or that hereafter may be owned, on the
25 line of railroads now owned and operated by the said railway company in the State of Texas, and also all other moneys, rights, credits, and effects, securities, bonds, and choses in action belonging to the said company, wherever the same may be found, with power to manage, control, and exercise all of the franchises whatsoever of the said railway company, and if need be, under the direction of the court, to sell, transfer, and convey the whole of the property of the railway company, and with power to prosecute, defend, and continue all suits brought by or against the said railway company, whether heretofore or hereafter commenced, or whether in the name of said railway company or otherwise; to defend all suits brought against him as receiver or affecting his said receivership, and to bring all suits in the name of said railway company as he may be advised by counsel may be necessary and proper in the discharge of the duties of his office, and for the acquiring, securing, and protecting of the assets, franchises, property, and rights of the said railway company.

And your orator further prays that your honors may from time to time enter all such further and other orders with reference to the said receivership as may be necessary in the premises and as may be agreeable to equity.

And your orator further prays that your honors may be pleased to decree that out of the rents, revenues, issues, and profits coming into the hands of the said receiver or receivers, after the payment of the costs of administration and operating expenses of the said railway, and necessary expenses for equipment and repair
26 thereto, the claims of your orator hereinbefore set forth, together with interest and all costs, may be paid and satisfied.

And your orator further prays for all such orders and decrees as the nature of the case may require; and your orator will ever pray, etc., etc.

FARRAR & KRUTTSCHNITT,
Counsel and Solicitors for Complainants.

John G. Schriever, being sworn, says that he is the vice-president and acting president of Morgan's Louisiana & Texas Railroad & Steamship Company, the complainant in the above bill; that he has read the same and knows the contents thereof, and the same, in so far as alleged of complainant's own knowledge, are true, and as to the rest the same is true, to the best of affiant's knowledge and belief.

JOHN G. SCHRIEVER.

Sworn to and subscribed before me this 31 day of March, 1885.

ANDREW HERO, JR.,

[SEAL.] *Not. Pub.*

27 EXHIBIT No. 1.

Deed of Date September 15, 1879.

Texas Central Railway Co. to the Farmers' Loan and Trust Company. Filed April 2, 1885. J. H. Finks, clerk.

The Texas Central Railway Company to the Farmers' Loan and Trust Company of the City of New York.

This deed, made and entered into this the fifteenth day of September, A. D. 1879, by and between the Texas Central Railway Company, a corporation organized under and by virtue of the laws of the State of Texas, party of the first part, and the Farmers' Loan and Trust Company of the City of New York, a corporation created and existing under the laws of the State of New York, trustee, party of the second part, witnesseth:

Whereas the said Texas Central Railway Company, to meet the expenses of constructing, completing, and putting into operation a railway in the State of Texas, which is to extend from Ross station, in McLennan county, through the counties of McLennan, Hill,
28 Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a distance of about one hundred and thirty miles, has resolved to issue and negotiate, as by law and action of the stockholders they are duly authorized, a series of bonds of one thousand dollars each, at the rate of fifteen thousand dollars to each mile of road, all of which bear date the fifteenth day of September, A. D. 1879, and which are made payable to the Farmers' Loan and Trust Company of the City of New York or bearer thirty years after November the first, 1879, for value received, at the agency in the city of New York, with interest from date at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, and which bonds are also exempt from any income tax that now is or hereafter may be levied or provided for by any law of the United States; which said bonds and the interest to become due thereon all are to be

equally secured by these presents, although issued at differ-
29 ent times, and to be authenticated by a certificate to be signed by the said trustee that the same are issued in accordance with this deed of trust or mortgage.

Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it duly paid by the said Farmers' Loan and Trust Company of the City of New York, the receipt of which is hereby acknowledged, the said Texas Central Railway Company has granted, bargained, and sold, conveyed, transferred, and confirmed, and by these presents doth grant, bargain, and sell, transfer and convey and confirm, unto the said Farmer's Loan and Trust Company of the City of New York, its successors and assigns in this trust forever, all and singular the main line of the said Texas Central Railway Company's railway, built and to be built, beginning at Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a distance of about one hundred and thirty miles, together with all side tracks, turn-outs, rolling stock, equipments, and materials, all rights of way and tracks, depot and shop
30 grounds, tenements and hereditaments, rights and franchises, including and meaning to include all the property, real and personal, now acquired or which may hereafter be acquired by the said company in the State of Texas, used for and pertaining to the operation of the said railway:

To have and to hold the said railway, property, premises, and rights hereby conveyed or intended so to be unto the said Farmers' Loan and Trust Company of the City of New York and its successor, successors, or assigns, in trust for the owners and holders of said bonds or any of them, subject to the terms and stipulations of said bonds and the interest coupons thereto annexed and the provisions of the articles of incorporation of said company, and subject also to the possession, control, and management of the directors of said railway company so long as said company shall well and truly perform all and singular the stipulations of the bond aforesaid and the covenants of this deed.

And in the event that the said railway company shall pay or cause to be paid the principal of said bonds and the several instalments of interest thereon as the same become due, then this
31 deed and all herein contained shall be void, and the property hereby conveyed shall revert to and revest in the said Texas Central Railway Company, its successors and assigns, without any acknowledgment of satisfaction, reconveyance, or other act; but in case the Texas Central Railway Company shall fail to pay the principal or any part thereof or any of the interest on any of the said bonds at any time when the same may become due and payable according to the tenor thereof, and if the said default shall continue sixty days after having been demanded, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, and upon the request of the holder

or holders of seventy-five per cent. of said bonds then outstanding, and written notice of said request being served on the New York agency of the party of the first part, at which said bonds and coupons are made payable, the said trustee (who may act by its president or attorney) or its successor or successors in this trust may and shall take actual possession (with or without entry or foreclosure) of said railway and of all and singular the said mortgaged property,
and shall manage and operate the same and receive all
32 the income and profits of the same, together with all the
books, papers, records, accounts, and money of said railway company, first defraying out of the same the expenses of the road and its needful repairs and the management of said trust, and the surplus to pay the interest and principal of all the bonds which may be due and outstanding and hereby secured *pro rata*, and upon the request of the holder or holders of seventy-five per cent. in amount of the bonds so in default which may be at any time outstanding under this deed of trust it shall be the duty of the said Farmers' Loan and Trust Company of the City of New York, by its president or agent duly appointed in its behalf, to foreclose this mortgage or deed of trust and sell the property herein and hereby conveyed, at the city of Houston, Texas, at public auction, to the highest bidder for cash, after having given at least sixty days' notice of the time, place, and terms of sale by advertisements in at least two daily newspapers published in the city of Houston and two daily newspapers published in the city — New York, and upon
making such sale said Farmers' Loan and Trust Company of
33 the City of New York, its successors or assigns in this trust,
shall execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed, and it, the said Farmers' Loan and Trust Company, its successors and assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this trust, including a reasonable commission or compensation to the trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the day of sale; and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds and coupons.

Third. If after paying all of said bonds and the interest thereon to the day of sale there shall remain a surplus said trustee shall pay the same to the Texas Central Railway Company, its successors or assigns.

And the said Texas Central Railway Company hereby further agrees to and with the said Farmers' Loan and Trust Company of the City
of New York, its successors and assigns in this trust, that it,
34 the said railway company, shall and will create a sinking
fund from its earnings for the redemption and purchase of said bonds and each of them by depositing with the said trustee from and after the first of January, one thousand eight hundred and eighty-five, and annually thereafter until the maturity of said bonds

on or before the first day of April in each year, a sum annually equal to two per centum of the amount of such bonds as shall then be outstanding and unpaid, which said sum shall be paid in gold coin of the weight and fineness hereinafter mentioned; and the said moneys shall be invested by the said trustee in the purchase of said bonds at the lowest price at which the same can be conveniently bought, after having advertised for same in two or more newspapers in the city of New York, provided such purchase can be made at or below the price of one thousand and one hundred dollars per bond; but it is understood that in case sufficient of said bonds to absorb the amount to be paid into said sinking fund cannot be purchased or are not offered to said trustee at or below the price above mentioned, then said trustee or its successor, successors, or assigns
35 shall, within thirty days after the receipt of said money, invest the same in United States Government bonds on the most favorable terms practicable; and in determining what bonds shall be purchased and redeemed with the sinking fund aforesaid it shall be the duty of said trustee to accept and pay the bonds offered to it at the lowest price within thirty days after the receipt of each installment of said sinking fund, and in case the bonds of different parties are offered at the same price it shall be the duty of said trustee to accept and pay those first offered within said thirty days; and the bonds and coupons so purchased shall be cancelled and a certificate of the numbers and amounts of said bonds shall be immediately furnished by said trustee to the treasurer of the said Texas Central Railway Company.

It is further covenanted by the said Texas Central Railway Company that the proceeds of these bonds shall be applied in good faith to the construction, improvement, and equipment of said railway and putting the same into operation. It is, however, expressly agreed that the said railway company may dispose of the
36 current net revenues and income of all the said property and railway hereby conveyed in such manner as it shall deem best until default shall be made in the payment of the interest or principal of said bonds or of any one or more of them, and shall have the right to sell and dispose of any such real estate or other property as it may own or acquire which may not be needed or required for the purpose and business of said railway, and which sale and conveyance of said property shall transfer the said property and title free from the incumbrance of this mortgage or deed of trust, and to change its tracks and make any and all alterations necessary for the benefit of the same.

It is understood and agreed that the bonds secured herein are to be issued as follows, viz: On the execution of these presents seven hundred and fifty bonds may issue, and no more bonds shall be issued until at least fifty miles of railway, commencing from Ross Station, in McLennan county, shall be completed and finished. After the completion of the fifty miles aforesaid other bonds
37 of this series may be issued at the rate only of fifteen thousand dollars per mile of complete road as follows—that is to say, seventy-five bonds may be issued for each five miles of railway

as the same may be completed beyond and in addition to said first fifty miles on the affidavit of the chief engineer of said railway company that said five miles have been so completed and are ready for use, it being expressly understood that the said seven hundred and fifty bonds and the said bonds to be issued after the completion of the fifty miles aforesaid shall be equally secured by these presents; and it is further agreed and understood that every bond issued under this mortgage or deed of trust shall be certified by the Farmers' Loan and Trust Company of the City of New York to be one of the series authorized to be issued by virtue hereof or under this deed of trust, and no bond shall be valid under this deed or entitled to its protection and security unless it shall be so certified.

It is further understood and agreed that the bonds hereinbefore described and hereby secured shall pass by delivery or by transfer on the books of the said Texas Central Railway
38 Company, and that after a registration of the ownership of said bonds, certified thereon by the transfer agent of said railway company, no transfer of said bonds, except upon the transfer books of said company, shall be valid unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired and not otherwise, and to this end the said Texas Central Railway Co. will keep in the city of New York a registration and transfer office, with the necessary books, in which the registration and transfer of said bonds may be made as above provided.

And the Texas Central Railway Company, for itself and successors and assigns, hereby covenants and agrees that in case of the default in the payment of the principal of said bonds or any
39 installments of interest thereon it will at once upon demand deliver possession of the railroad and other property herein conveyed to the trustee herein named or to its successor, successors, or assigns.

The said Texas Central Railway Company hereby further agrees for itself, its successors and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expense of the transfer agent herein provided for and appointed.

And the said Farmers' Loan and Trust Company of the City of New York hereby accepts this conveyance and covenants to perform this trust hereby vested in it, according to the terms of this deed and the bonds aforesaid.

In case a vacancy should occur in this trust from any cause whatsoever it shall be lawful for the said railway company or any of the bondholders to apply in writing to the then chief justice of the supreme court of the State of Texas to appoint another trustee or trustees to supply the vacancy; and in the event that said application be made by any of the bondholders, then and in that case notice of
40 said application shall be given to the said railway company

at least ten days before said vacancy shall be filled; and the said chief justice is hereby authorized upon application and notice aforesaid, without legal proceedings, to appoint one or two trustees to fill the vacancy, and the trustee or trustees so appointed shall be vested with all the titles, powers, duties, and estates possessed under this instrument by the said Farmers' Loan and Trust Company of the City of New York.

And the said Farmers' L. and T. Co. of the City of New York, its successor or successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by it when such agent shall have been employed with reasonable discretion.

It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with a foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate in such cases, by any court of competent jurisdiction.

41 For the purpose of designating the rolling stock that shall belong to the line of railroad hereby mortgaged it is agreed by and between the parties hereto that the said railway company will mark, in some substantial manner, all engines and cars of each and every class hereafter purchased by it either with the name of the said company or the initials of its name.

In testimony whereof the said Texas Central Railway Company has caused its seal to be hereto affixed and these presents to be signed by its president and secretary on this the fifteenth day of September, A. D. one thousand eight hundred and seventy-nine; and the said Farmers' Loan and Trust Co. of the City of New York has, by its president, also signed these presents and attached its corporate seal hereto in signification of its acceptance of the trust herein created.

(Signed) TEXAS CENTRAL RAILWAY COMPANY,
[SEAL.] By G. JORDAN,
Attest: *Vice-Pres't & Acting Pres'd't.*
(Signed) A. S. RICHARDSON, *Sec't'y.*

THE FARMERS' LOAN & TRUST CO.,
[SEAL.] By R. G. RALSTON, *Pres't.*
Attest: GEO. P. FITCH, *Sec'y.*

42 STATE OF NEW YORK, }
City & County of New York, } ss:

Before me, Joseph M. Bulger, a commissioner for the State of Texas in and for the county and State aforesaid, duly commissioned and qualified, personally appeared the Farmers' Loan & Trust Company, by its president, Roswell G. Ralston, who acknowledged that he signed the foregoing instrument and affixed the seal of the corporation thereto for the considerations, uses, & purposes therein stated.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-ninth day of September, A. D. 1879.

(Signed) JOS. M. BULGER,
[SEAL.] *Commissioner for the State of Texas in New York.*

STATE OF TEXAS, }
County of Harris. }

Before me, J. C. Kidd, a notary public in and for the county of Harris, Texas, duly commissioned and sworn, personally appeared G. Jordan, vice-pres't, and A. S. Richardson, sec'y of the Texas Central Railway Co., who acknowledged that they signed the foregoing instrument and affixed the seal of the said corporation hereto
43 for the consideration, uses, and purposes therein stated.

In witness whereof I hereunto set my hand and affix my official seal, at Houston, this the twenty-eighth day of October, A. D. 1879.

(Signed) J. C. KIDD,
[SEAL.] *Notary Public, County of Harris, Texas.*

I do hereby certify that the foregoing is a correct copy of the original mortgage executed by the Texas Central Railway Company to the Farmers' Loan & Trust Co. of New York on September 15, 1879, which said original mortgage is now on file in the office of the company.

H. HALL,
[SEAL.] *Sec'y Tex. Cent. R'y Co.*

Bond.

THE UNITED STATES OF AMERICA, }
State of Texas. }

No. —. The Texas Central Railway Company. $1,000.

First-mortgage sinking-fund gold-bearing bond, interest at 7 per centum per annum, payable semi-annually.

The Texas Central Railway Company, a corporation or-
44 ganized under and by virtue of the laws of the State of Texas, promises to pay to the Farmers' Loan and Trust Company of the City of New York or bearer (for value received), thirty years after November first, 1879, at its agency in the city of New York, one thousand dollars, with interest from said date at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on presentation and surrender of the proper annexed coupons; the principal and interest of this bond to be paid in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, without diminution on account of any income tax that hereafter may be levied or provided for under any law of the United States.

This bond is one of a series of one thousand dollars each, numbered consecutively from one upwards, issued fifteen to each mile, all of which are equally secured by a deed of trust bearing

date the fifteenth day of September, A. D. eighteen hundred and seventy-nine, executed by said company unto the Farmers' Loan and Trust Company of the City of New York, trustee, conveying all and singular the entire main line of said company's railway, built and to be built, beginning at Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a distance of about one hundred and thirty miles, together with all side tracks, turn-outs, rolling stock, equipments, and materials, all right of way, and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, and all property, real and personal, acquired and hereafter to be acquired, pertaining and necessary to the operation of said railway.

This bond shall pass by delivery or by transfer on the books of the Texas Central Railway Company, and after a registration of the ownership of said bond certified thereon by the transfer agent of said railway company no transfer of said bonds, except upon the transfer books of said company, shall be valid unless the transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bond shall continue subject to successive registration and transfer to bearer as aforesaid, at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bond when such registration is desired and not otherwise.

This bond shall not become obligatory until it shall have been authorized by the certificate endorsed hereon, duly signed by the Farmers' Loan and Trust Company of the City of New York.

In witness whereof the said Texas Central Railway Company has caused its corporate seal to be hereto affixed and the same to be attested by the signatures of its president and secretary this the fifteenth day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

——— ———.
——— ———.

$35.00. Coupon.

The Texas Central Railway Company will pay to bearer on the first day of May or November,* at its agency in the city of New York, on the surrender of this coupon, thirty-five dollars in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, free from any income tax levied by the United States for semi-annual interest on its first-mortgage bond.

A. S. RICHARDSON, *Secretary.*

Trustee's Certificate.

The Farmers' Loan and Trust Company of the City of New York hereby certifies that this bond is one of the series of bonds described

* The year on coupons of course will change from year to year.

in and secured by the mortgage or deed of trust within mentioned, and that no more such bonds have been certified by this company than are authorized by said deed of trust.

48 The Texas Central Railway Company to the Farmers' Loan and Trust Company of the City of New York.

This deed, made and entered into this sixteenth day of May, A. D. 1881, by and between the Texas Central Railway Company, a corporation organized under and by virtue of the laws of the State of Texas, party of the first part, hereinafter denominated railway company, and the Farmers' Loan and Trust Company of the City of New York, a corporation created and existing under the laws of the State of New York, trustee, party of the second part, hereinafter denominated trustee, witnesseth:

Whereas the Texas Central Railway Company, in pursuance of the laws of the State of Texas, has amended its charter authorizing it to extend and construct its railway from its present terminus near the centre of Eastland county through the counties of Eastland, Callahan, Stephens, Shackelford, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman, to a point on the north boundary line of Texas, a distance of about three hundred and seventy-five miles; also to construct a branch railway from the company's main line at Whitney, in Hill county, through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie, to a point on Red River, in Bowie county, east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; also to construct a branch railway from a point in Hopkins county on the line of the proposed railway from Whitney to the point on Red River in Bowie county, through the counties of Hopkins, Delta, and Lamar, to a point on Red River in Lamar county near the mouth of Boggy river, a distance of about sixty-five miles;

And whereas the said Texas Central Railway Company, to meet the expense of constructing, completing, and putting into operation the extension of its said railway and the branch lines authorized to be constructed by said amendment to its charter, and for the purpose of exchanging and retiring the series of bonds issued by the said railway company bearing date September 15th, 1879, amounting in the aggregate to $2,145,000 and numbered consecutively from 1 to 2,145, inclusive, and which are secured by a mortgage on its line of railway from the town of Ross, in McLennan county, to the town of Cisco, in Eastland county, a distance of one hundred and forty-three miles, executed September 15th, 1879, to the Farmers' Loan and Trust Company of the City of New York, has resolved to issue and negotiate, as by law and action of the stockholders it is duly authorized, a series of bonds of one thousand dollars each, at the rate of fifteen thousand dollars to each mile of road, all
49 of which bear date the sixteenth day of May, A. D. 1881, and

which are made payable to the Farmers' Loan and Trust Company of the City of New York or bearer on the 1st day of May, A. D. 1911, for value received, at its agency in the city of New York, with interest from date at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and fineness as fixed by the laws of the United States now in force, and which bonds are also exempt from any income tax that now is or hereafter may be levied or provided for by any law of the United States, which said bonds and the interest to become due thereon are to be all equally secured by these presents, although issued at different times, and to be authenticated by a certificate to be signed by the said trustee that the same are issued in accordance with this deed of trust or mortgage:

Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it duly paid by the said Farmers' Loan and Trust Company of the City of New York, the receipt of which is hereby acknowledged, the said Texas Central Railway Company has granted, bargained, and sold, conveyed, transferred, and confirmed, and by these presents doth grant, bargain, and sell, convey, transfer, and confirm, unto the said Farmers' Loan and Trust Company of the City of New York, its successor, successors, and assigns in this trust forever, all and singular the main line of the said Central Texas Railway Company's railway, built and to be built, beginning at the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackelford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas, between the 101st and 102d meridian of west longitude, a distance of about three hundred and seventy-five miles; and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; and also upon all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county on the said company's branch line of railway from Whitney to Red River in Bowie county; thence through the counties of Hopkins, Delta, and Lamar to a point on Red River in Lamar county near the mouth of Boggy river, a distance of about sixty-five miles, together with all side tracks, turn-outs, rolling stock, equipments, and materials, all rights of way, and tracks, depot and shop grounds, tene-

ments and hereditaments, rights and franchises, including and meaning to include all the property, real and personal, now acquired or which hereafter may be acquired by the said company in the State of Texas, used for and pertaining to the operation of the said railway, as herein described, provided that nothing herein contained shall create any lien upon the lines of railway that the Texas Central Railway Company may hereafter acquire or construct not included in the said extended line or branches herein described nor upon the equipments, appointments, appurtenances, revenues, property, real or personal, rights and franchises of said railway hereafter constructed and acquired as aforesaid:

To have and to hold the said railway, property, premises, and rights hereby conveyed or intended so to be unto the said Farmers' Loan and Trust Company of the City of New York and its successor, successors, or assigns, in trust for the owners and holders of said bonds or any of them, subject to the terms and stipulations of said bonds and the interest coupons thereto annexed and the provisions of the articles of incorporation of said company, and subject also to the possession, control, and management of the directors of said railway company so long as said company shall well and truly perform all and singular the stipulations of the bond aforesaid and the covenants of this deed.

And in the event that the said railway company shall pay or cause to be paid the principal of said bonds and the several installments of interest thereon as the same become due, then this deed and all herein contained shall be void, and the property hereby conveyed shall revert to and revest in the said Texas Central Railway Company, its successors and assigns, without any acknowledgment or satisfaction, reconveyance, or other act; but in case the Texas Central Railway Company shall fail to pay the principal or any part thereof, or any of the interest on any of the said bonds at any time when the same may become due and payable, according to the tenor thereof, and if the said default shall continue sixty days after having been demanded, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, and upon the request of the holder or holders of seventy-five per cent. of said bonds then outstanding and written notice of said request being served on the New York agency of het party of the first part at which said bonds and coupons are made payable, the said trustee (who may act by its president or attorney) or its successor or successors in this trust may and shall take actual possession (with or without entry or foreclosure) of said railway hereby conveyed and of all and singular the said mortgaged property, and shall manage and operate the same and receive all the income and profits of the same, together with all the books, papers, records, accounts, and money of said railway company, first defraying out of the same the expenses of the road and its needful repairs and the management of said trust, and the surplus to pay the interest and principal of all the bonds issued hereunder which may be due and outstanding and hereby secured *pro rata*.

And upon the request of the holder or holders of seventy-five per cent. in amount of the bonds so in default which may be at any time outstanding under this deed of trust it shall be the duty of the said Farmers' Loan and Trust Company of the City of New York, by its president or agent duly appointed in its behalf, to foreclose this mortgage or deed of trust and sell the property herein and hereby conveyed at the city of Houston, Texas, at public auction, to the
51 highest bidder for cash, after having given at least sixty days' notice of the time, place, and terms of sale by advertisement in at least two daily newspapers published in the city of Houston and two daily newspapers published in the city of New York; and upon making such sale said Farmers' Loan and Trust Company of the City of New York, its successors or assigns in this trust, shall execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed, and it, the said Farmers' Loan and Trust Company of the City of New York, its successors and assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this trust, including a reasonable commission or compensation to the trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the day of sale; and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds and coupons; and

Third. If, after paying all of said bonds and the interest thereon to the day of sale there shall remain a surplus, said trustee shall pay the same to the Texas Central Railway Company, its successors or assigns.

And the said Texas Central Railway Company hereby further agrees to and with the said Farmers' Loan and Trust Company of the City of New York, its successors and assigns in this trust, that it, the said railway company, shall and will create a sinking fund from its earnings for the redemption and purchase of said bonds and each of them by depositing with the said trustee, from and after the first day of January, one thousand eight hundred and eighty-five, and annually thereafter, until the maturity of said bonds, on or before the first day of April in each year, a sum annually equal to two per centum of the amount of such bonds as shall then be outstanding and unpaid, which said sum shall be paid in gold coin of the weight and fineness herein mentioned; and the said moneys shall be invested by the said trustee in the purchase of said bonds at the lowest price at which the same can conveniently be bought, after having advertised for the same in two or more newspapers in the city of New York, provided such purchase can be made at or below the price of one thousand and one hundred dollars per bond; but it is understood that in case sufficient of said bonds to absorb the amount to be paid into said sinking fund cannot be purchased or are not offered to said trustee at or below the price above mentioned, then said trustee or its successor, successors, or assigns shall, within thirty days after the receipt of said money, invest the same in United

States Government bonds on the most favorable terms practicable; and in determining what bonds shall be purchased or redeemed with the sinking fund aforesaid it shall be the duty of said trustee to accept and pay the bonds offered to it at the lowest price within thirty days after the receipt of each installment of said sinking fund, and in case the bonds of different parties are offered at the same price it shall be the duty of said trustee to accept and pay those first offered within said thirty days, and the bonds and coupons
52 so purchased shall be cancelled and a certificate of the numbers and amounts of said bonds shall be immediately furnished by said trustee to the treasurer of the Texas Central Railway Company.

It is further covenanted by the said Texas Central Railway Company that the proceeds of these bonds shall be applied in good faith to the construction, improvement, and equipment of said railway and putting the same into operation, and also for the purpose of exchanging and retiring the said bonds of date September 15, 1879, as hereinafter mentioned. It is, however, expressly agreed that the said railway company may dispose of the current net revenues and income of all the said property and railway hereby conveyed in such manner as it shall deem best until default shall be made in the payment of the interest or principal of said bonds or of any one or more of them, and shall have the right to sell and dispose of any of such real estate or other property as it may own or acquire which may not be needed or required for the purposes and business of said railway, and which sale and conveyance of said property shall transfer the said property and title free from the encumbrance of this mortgage or deed of trust, and to change its tracks and make any and all alterations necessary for the benefit of the same.

And it is further provided and hereby covenanted and agreed that the sum of two millions one hundred and forty-five thousand dollars ($2,145,000) of the said bonds hereby intended to be secured shall be reserved by the said trustee and shall not be issued except for the purpose of exchanging and retiring the series of bonds now outstanding, amounting in the aggregate to the sum of two million one hundred and forty-five thousand dollars ($2,145,000), issued by the said railway company, and the payment of which is secured by a mortgage upon that portion of the railway of said company extending from the town of Ross, in McLennan county, to the town of Cisco, in Eastland county.

It is further provided that in the event of the said railway company paying any of the series of bonds bearing date September 15, 1879, hereinbefore mentioned, then the trustee herein named shall sign and deliver to the said railway company a like amount of bonds issued under this deed.

And also when evidence is furnished of the payment of any amount of the two per cent. sinking fund provided for by the mortgage hereinbefore mentioned to the trustee therein named, then and in such case the said trustee herein named shall sign and deliver to the said railway company bonds of this series in amount equal to the amount so paid.

It is further provided and agreed that, whenever authorized and requested so to do in writing by the president or vice-president of the said railway company, the trustee shall receive of the holder of any of the bonds issued under the mortgage executed September 15, 1879, now outstanding, any number of the said bonds designated in said written request, and shall deliver to the holder or holders in lieu thereof an equal number and amount of the bonds of this issue, and the bonds so delivered to the trustee shall be held for the security of the holders of the series of bonds authorized under this trust.

53 It is further provided and agreed that whenever any of the bonds issued under the said mortgage executed September 15, 1879, are purchased or taken up by exchange they shall not be cancelled or the mortgage given to secure the payment thereof discharged until such time as the trustee herein named has the entire amount of bonds purporting to be secured under the said mortgage, when and whereupon, at the request of the president, acting under the authority of the board of directors of said railway company, it, the said trustee, shall surrender said bonds cancelled to the said railway company, who shall thereupon procure or cause to be satisfied and discharged the mortgage given to secure the payment of said bonds.

And upon the satisfaction and discharge of the said mortgage executed September 15, 1879, the balance of sinking fund remaining in the hands of the trustee of that mortgage and the accumulated interest realized on the same or the bonds in which the same has been invested shall be paid to the Farmers' Loan and Trust Company, trustee of this mortgage, and the same shall be regarded as a part of the sinking fund of the bonds issued under this mortgage.

It is further provided that all of the bonds received in exchange for bonds issued hereunder shall be held by the trustee herein named as follows:

First. As an additional security for the payment of the principal and interest of the bonds issued under this deed.

Second. For the benefit and security of the Texas Central Railway Company, its successors and assigns.

All bonds so received in exchange for bonds issued under this deed shall be stamped with words substantially as follows, viz: "This bond belongs to the trustee named in the deed of trust made by the Texas Central Railway Company, dated the sixteenth day of May, 1881, and is not negotiable." And it is provided that evidence of the payment of the two per cent. sinking fund on the amount of said bonds so held and endorsed to the trustee of the mortgage executed September 15, 1879, hereinbefore mentioned, shall be in lieu of the two per cent. sinking fund of a like amount of bonds of this series.

It is understood and agreed that until default in the payment of the coupons of the bonds of this series the said Farmers' Loan and Trust Company shall from time to time, as they mature, cancel and deliver to the said railway company the corresponding coupons of

such of the bonds of the series of September 15, 1879, as may have been delivered to them under the provisions of this trust.

It is further agreed that all bonds issued under this trust, whether issued for purposes of construction or for the purpose of retiring the bonds issued under the deed of trust of September 15, 1879, shall be equally secured and shall be numbered consecutively as issued, but when issued for purposes of construction they shall be issued only at the rate of $15,000 per mile of completed road, as follows—that is to say, seventy-five bonds may be issued for each five miles of railway, either of the extension or branches, as the same
54 may be completed on the affidavit of the chief engineer of said railway company that said five miles have been completed and are ready for use; and it is further agreed and understood that every bond issued under this mortgage or deed of trust shall be certified by the Farmers' Loan and Trust Company of the City of New York to be one of the series authorized to be issued by virtue hereof or under this deed of trust, and no bond shall be valid under this deed or entitled to its protection and security unless it shall be so certified.

It is further understood and agreed that the bonds hereinbefore described and hereby secured shall pass by delivery or by transfer on the books of the said Texas Central Railway Company, and that after a registration of the ownership of said bonds, certified thereon by the transfer agent of said railway company, no transfer of said bonds except upon the transfer books of said company shall be valid unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired, and not otherwise; and to this end the said Texas Central Railway Company will keep in the city of New York a registration and transfer office, with the necessary books, in which the registration and transfer of said bonds may be made as herein provided.

And the said Texas Central Railway Company, for itself and its successors and assigns, hereby covenants and agrees that in case of the default in the payment of the principal of said bonds or any installment of interest thereon for the period of sixty days, as before provided, it will at once, upon demand, deliver possession of the railroad and other property herein conveyed to the trustee herein named or to its successor, successors, or assigns.

The said Texas Central Railway Company hereby further agrees, for itself, its successors and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expense of the transfer agent herein provided for and appointed.

And the said Farmers' Loan and Trust Company of the City of New York hereby accepts this conveyance and covenants to perform the trust hereby vested in it according to the terms of this deed and the bonds aforesaid.

In case a vacancy shall occur in this trust from any cause what

soever it shall be lawful for the said railway company or any of the bondholders to apply in writing to the then chief justice of the supreme court of the State of Texas to appoint another trustee or trustees to supply the vacancy; and in the event that said application be made by any of the bondholders, then and in that case notice of said application shall be given to the said railway company at least ten days before said vacancy shall be filled; and the said chief justice is hereby authorized, upon application and notice as aforesaid, without legal proceedings, to appoint one or two trustees to fill the vacancy, and the trustee or trustees so appointed shall be vested with all the titles, powers, duties, and estates possessed under this instrument by the said Farmers' Loan and Trust Company of the City of New York.

55 And the said Farmer's Loan and Trust Company of the City of New York, its successor or successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by it when such agent shall have been employed with reasonable discretion.

It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with the foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate in such cases by any court of competent jurisdiction.

For the purpose of designating the rolling stock that shall belong to the line of railroad hereby mortgaged it is agreed by and between the parties hereto that the said railway company will mark in some substantial manner all engines and cars of each and every class hereafter purchased by it with either the name of said company or the initials of its name.

In testimony whereof the said Texas Central Railway Company has caused its seal to be hereto affixed and these presents [SEAL.] to be signed by its president and secretary on this the sixteenth day of May, A. D. one thousand eight hundred and eighty-one.

(Signed) THE TEXAS CENTRAL RAILWAY COMPANY.
By CHAS. A. WHITNEY, *Pres't.*

Attest: A. S. RICHARDSON, *Sec'y.*

And the said Farmers' Loan and Trust Company of the City of [SEAL.] New York, trustee herein, has, by its president, also signed these presents and attached its corporate seal hereto in signification of its acceptance of the trust herein created.

(Signed) THE FARMERS' LOAN & TRUST CO.,
By R. G. RALSTON, *Pres't.*

Attest: GEO. P. FITCH, *Sec'y.*

I, A. S. Richardson, secretary of the Texas Central Railway Company, do hereby certify that the above & foregoing eight pages of

printed matter is a true & correct copy of the original mortgage or deed of trust executed May 16, 1881, by said company in favor of the Farmers' Loan & Trust Company of the City of New York.

Witness my signature & the seal of said Texas Central Railway Co., at Ross, Texas, Dec. 19, 1881.

[Seal Texas Central Railway Company.]

A. S. RICHARDSON, *Sec'ty.*

56 *Bond.*

UNITED STATES OF AMERICA, *State of Texas:*

The Texas Central Railway Company.

No.—. $1,000.

First-Mortgage Sinking-Fund Gold-Bearing Bond.

Interest at 7 per centum per annum, payable semi-annually.

The Texas Central Railway Company, a corporation organized under and by virtue of the laws of the State of Texas, promises to pay to the Farmers' Loan and Trust Company of the City of New York or bearer, for value received, on the first day of May, A. D. nineteen hundred and eleven, at its agency in the city of New York, one thousand dollars, with interest from said date at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year on presentation and surrender of the proper annexed coupons; the principal and interest of this bond to be paid in gold coin of the present weight and fineness as fixed by the laws of the United States now in force without diminution on account of any income tax that hereafter may be levied or provided for under any law of the United States.

This bond is one of a series of one thousand dollars each, numbered consecutively from one upwards, issued fifteen to each mile, all of which are equally secured by a deed of trust bearing date the sixteenth day of May, A. D. eighteen hundred and eighty-one, executed by said company unto the Farmers' Loan and Trust Company of the City of New York, trustee, conveying all and singular, as provided in said deed of trust, the entire line of said company's railway built and to be built, beginning at Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Stephens, Shackelford, Throckmorton, Haskell, Knox, Baylor, Hardeman, King, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas, a distance of about three hundred and seventy-five miles; and also upon the branch line of said company's railway built or to be built from the company's main line at Whitney, in Hill county, through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River,

and Bowie to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; and also upon the said company's branch railway built and to be built from a point in Hopkins county on the line of the proposed railway, to be constructed from Whitney to Red River in Bowie county, thence through the counties of Hopkins, Delta, and Lamar to a point on Red River in Lamar county, a distance of about sixty-five miles; the total distance of said extension of the main line and branch lines proposed to be con-
57 structed being about six hundred and seventy-five miles, and together with all side tracks, turn-outs, rolling stock, equipments, and materials, all right of way and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, and all the property, real and personal, acquired and hereafter to be acquired, pertaining and necessary to the operation of said railway.

This bond shall pass by delivery or by transfer on the books of the Texas Central Railway Company, and after a registration of the ownership of said bond, certified thereon by the transfer agent of said railway company, no transfer of said bonds, except upon the transfer books of said company, shall be valid unless the transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bond shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bond when such registration is desired, and not otherwise.

This bond shall not become obligatory until it shall have been authorized by the certificate endorsed hereon, duly signed by the Farmers' Loan and Trust Company of the City of New York.

In witness whereof the said Texas Central Railway Company has caused its corporate seal to be hereto affixed and the same to be attested by the signatures of its president and secretary this the sixteenth day of May, in the year of our Lord one thousand eight hundred and eighty-one.

$35.00. *Coupon.*

The Texas Central Railway Company will pay to bearer, on the — day of ——, at its agency in the city of New York, on the surrender of this coupon, thirty-five dollars in gold coin, for semi-annual interest on its first-mortgage bond.

No. —. —— ——, *Secretary.*

Trustee's Certificate.

The Farmers' Loan and Trust Company of the City of New York hereby certifies that this bond is one of a series of bonds described in and secured by the mortgage or deed of trust within mentioned, and that no more such bonds have been certified by this company than are authorized by said deed of trust.

58 [Endorsed:] Exhibit No. 2. Filed April 2, 1885. J. H. Finks, clerk.

[Endorsed:] Copy 3. The Texas Central Railway Company to the Farmers' Loan and Trust Company of the City of New York. First mortgage.

59 An indenture made the first day of October, in the year of our Lord one thousand eight hundred and eighty-four, by and between the Texas Central Railway Company, a corporation created, organized, and existing under the laws of the State of Texas, party of the first part, and the Metropolitan Trust Company of the City of New York, a corporation created, organized, and existing under the laws of the State of New York, party of the second part.

Whereas the party of the first part, under and by virtue of its articles of incorporation, as amended, is authorized to construct and operate a line of railway beginning at the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackelford, Stephens, Throckmorton, Haskel, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas between the 101st and 102d meridian of west longitude, a distance of about 375 miles; and also a line of railway beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about 235 miles; and also a line of railway beginning at a point in Hopkins county on its line of railway from Whitney to Red River in Bowie county; thence through the counties of Hopkins, Delta, and Lamar to a point on the Red River in Lamar county near the mouth of Boggy river, a distance of about 65 miles;

And whereas the portions of said lines of railway extending from said Ross, in McLennan county, to Albany, in Shackelford county, and from Garrett, in Ellis county, to Roberts, in Hunt county, and aggregating upwards of 228 miles in length, have been already constructed;

And whereas heretofore and under date of the 15th day of September, A. D. 1879, the said party of the first part executed an indenture of mortgage to the Farmers' Loan and Trust Company of the City of New York, under which indenture of mortgage bonds of the party of the first part to the aggregate amount of $2,145,000 have been heretofore issued and are now outstanding, and by such indenture of mortgage are secured upon that portion of the line of railway of the party of the first part extending from the town of Ross, in McLennan county, to the town of Cisco, in Eastland county, a distance of 143 miles;

And whereas heretofore and under date of the 16th day of May, A. D. 1881, the party of the first part executed another indenture of mortgage to the Farmers' Loan and Trust Company of the City of

New York for the purpose of exchanging and retiring the said bonds, amounting in the aggregate to $2,145,000, issued under and secured by the said mortgage dated September 15, 1879, and for the purpose of meeting the expense of constructing, completing, and putting into operation the extension of its railway and the branch lines authorized to be constructed by the amendment to the charter of the party of the first part therein mentioned, and there have been issued and are now outstanding under said mortgage bearing date the 16th day of May, A. D. 1881, bonds amounting in the aggregate
60 at their par or face value to $1,254,000, secured by mortgage upon the main line and branch lines of the party of the first part, built or to be built, which are specifically described in and mortgaged by said indenture of mortgage bearing date the 16th day of May, A. D. 1881, as by reference to said indenture of mortgage will more fully and at large appear;

And whereas for the purpose under which, according to the laws of the said State of Texas, it is or may be authorized to issue the same the party of the first part is about to execute and issue from time to time (but with the limitations hereinafter prescribed in respect to the aggregate amount thereof which may at any time be outstanding) its general mortgage bonds for one thousand dollars each, of the form and tenor following, to wit:

UNITED STATES OF AMERICA.

Texas Central Railway Company.

No. —. *General Mortgage Bond.* No. —.

The Texas Central Railway Company, for value received, promises to pay to the bearer hereof or, if registered, to the registered holder hereof the sum of one thousand dollars fifty years after date, and, on presentation and surrender at or after maturity of the respective interest warrants hereunto annexed, to pay to the person presenting the same, or if this bond is registered and the interest warrants appertaining thereto cancelled to pay to the registered holder thereof interest on such principal sum at the rate of six per centum per annum semi-annually on or after the first days of May and November in each year, such payments of principal and interest to be made at the office or agency of said company in the city of New York.

This is one of the general mortgage bonds secured by indenture of mortgage or deed of trust to the Metropolitan Trust Company of the City of New York, trustee, dated October 1st, 1884.

None of said bonds are to be in anywise binding or obligatory unless authenticated by a certificate endorsed thereon signed by said trustee or its successor or successors in said trust.

This bond may at any time upon production thereof to said railway company and proper endorsement being made thereon, and either with or without the surrender to said railway company for cancellation of all unpaid interest warrants appertaining thereto, be

registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books.

In witness whereof the said railway company has caused these presents to be signed by its president and its corporate seal to be fixed thereto and attested by its secretary this first day of November, A. D. one thousand eight hundred and eighty-four.

TEXAS CENTRAL RAILWAY COMPANY,

[SEAL.] By —— ——, *President.*

Attest:

—— ——, *Secretary.*

61 And whereas the general form of the several interest warrants to be annexed to such bonds (each of which interest warrants is to bear the engraved signature of the treasurer of the railway company) is to be as follows, viz:

(*Form of Interest Warrant.*)

Interest warrant for thirty dollars, being semi-annual interest maturing on the first day of —— upon Texas Central Railway Company's general mortgage bond No. —, $30.

—— ——, *Treasurer.*

And whereas all of the said bonds are to be equally secured by mortgage and hypothecation of the railways and railway lines of the party of the first part and its successors, constructed and to be constructed, and of all their appurtenances and the franchises relating or pertaining thereto:

Now, therefore, this indenture witnesseth that the party of the first part, in consideration of the premises and of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of such bonds, with the interest to accrue thereon, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part and its successors and assigns forever all the railways and railway lines of the party of the first part, whether constructed or to be constructed, and all their appurtenances, including therein all such lands and rights of way, superstructure, rails, tracks, side tracks or sidings, bridges, buildings, fences, depots, station-houses, shops, warehouses, car-houses, engine-houses, machine shops, repair shops, buildings, erections, and structures as may be necessary to the operation of said railways or said railway lines, and all and singular the rolling stock, equipment, and machinery appertaining thereto, whether now owned or hereafter to be acquired, and also all the rents, issues, tolls, incomes, earnings, and profits of such railways and railway lines and also all the rights, privileges, immunities, and franchises relating or per-

taining to such railways or railway lines which the said party of the first part now possesses, owns, or is entitled unto, or it or its successors may hereafter become possessed of or entitled unto; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in eqnity, of the said party of the first part and its successors of, in, and to the premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above-mentioned and described premises, together with the appurtenances, unto the said party of the second part and its successors and assigns forever, in trust, nevertheless, for the security and benefit of all and every the persons or bodies corporate who or which shall be or at any time become the holder or holders of any of such bonds, or the interest warrants appertaining thereto, without preference to the holder of any of the said bonds or interest warrants over any of the others by reason of priority in the date thereof or the time of the issuing or negotiating of the same.

Provided always and these presents are upon the express condition that if the party of the first part or its successors or assigns shall well and truly pay or cause to be paid to the holders of the said bonds and interest warrants, when and as the same shall become due and payable, the principal and interest moneys secured thereby, according to the terms, provisions, and conditions, tenor and effect of the said bonds, then these presents and the estate hereby granted shall cease, determine, and be null and void.

And it is covenanted and agreed by and between the parties hereto that until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds, or some of them or some part thereof, the said party of the first part, its successors and as-
62 signs, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances, and all and singular the rights and franchises hereinbefore described, and to receive, take, and use the tolls, income, earnings, and profits thereof, and the trustee or trustees hereunder shall have full power, in its or their discretion, upon written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description hereby mortgaged which in its or their judgment shall not be necessary for or for use in connection with said railways, and to consent to such changes in the location of tracks, depots, and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or conveyed shall thereupon become subject to the lien of this mortgage, and upon request of the trustee or trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of

them or any part thereof, according to the tenor and effect of said bonds or either of them, and if such default shall continue for the period of six months, then and in that case the party of the second part or its successors in the trust are hereby authorized and empowered, in person or by one or more agents, upon the request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, to enter into and upon and take and, so long as such default or any default in in respect to the payment of such principal or interest moneys continues, to hold possession of all and singular the premises, estates, franchises, rights, privileges, and property hereby granted and conveyed or intended so to be, operating the said railways, making from time to time all such repairs and replacements as it or they may deem judicious, and all such useful alterations, additions, and improvements as the income coming into its or their hands shall be adequate to pay for, and taking, collecting, and receiving all fares, freights, tolls, earnings, issues, profits, and income of said railways, and applying such fares, freights, tolls, earnings, issues, profits, and income to the proper expenses of holding, operating, and managing the said railways and other premises and conducting the business thereof to the payment of and for all taxes and assessments which shall be levied or assessed thereon, and all necessary and proper repairs, replacements, alterations, additions, and improvements upon said property, and all expenses, costs, charges, and counsel fees in the premises of said party of the second part or its successors in the trust, and a reasonable compensation for its or their services, and in its or their discretion to the payment of interest matured or maturing on outstanding bonds secured by the prior mortgages above mentioned or of liens upon said mortgaged premises prior to the lien of this indenture, and thereafter to the payment of the interest and principal of the said bonds, according to the tenor and effect thereof, as the same may be or become due and payable, and in case the principal moneys secured by such bonds shall not have become due the moneys applicable to the payment of interest shall be applied upon the interest warrants remaining in default in the order of their maturity. In case the said principal moneys shall have become due the moneys applicable to the payment of the principal and interest on such bonds shall be applied to such principal and interest *pro rata* without any preference or priority whatsoever.

And, further, if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them or any part thereof, and if such default shall continue for the period of six months, then and in that case, at the request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, the said party of the second part or its successors in the said trust may, and it and they are hereby authorized and empowered to, cause the whole of the said premises, estates, franchises, rights, privileges, and property hereby granted and conveyed or intended so to be, with their appurtenances, and all benefit and equity of redemption of the said party of the first part and its successors and assigns therein

or thereto to be sold at public auction in the city of New York,
63 in the State of New York, or the city of Houston, in the State of Texas, giving at least three months' previous notice of the time and place of such sale by publishing the same at least once in each week during such period of three months in two newspapers published in said city of New York and two newspapers published in said city of Houston, and giving such other notice of such sale as may be required by law, if any other notice be so required.

And it shall be lawful for the said party of the second part or its successors making such sale, and it and they are hereby authorized and empowered, as the attorney or attorneys of the party of the first part and its successors by these presents duly constituted and appointed for that purpose, to make, execute, and deliver to the purchaser or purchasers on such sale all such deeds and conveyances as shall be necessary or proper to convey and assure to and vest in him or them the said premises, estates, franchises, rights, privileges, and property and every part and parcel thereof, and all of the estate, right, title, and interest of the said party of the first part and its successors and assigns therein or thereto, and such sale and the deeds and conveyances so to be thereupon executed shall be valid and effectual forever and shall be a perpetual bar, both in law and equity, against the said party of the first part and its successors and assigns and against all persons claiming or to claim by, from, or under it or them or any of them.

And it is further declared and agreed that the receipt of the trustee or trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase-money and receiving such receipt of such trustee or trustees therefor, be obliged to see to the application of such purchase-money upon or for the trusts or purposes of these presents or be in anywise answerable for any loss, misapplication, or non-application of such purchase-money by the trustee or trustees.

And it is hereby declared and agreed that the said party of the second part or its successors in the said trust shall, out of the proceeds of such sale or of any sale which shall, under judicial proceedings or otherwise, be made of the said premises in enforcement of the security afforded by these presents, in the first place, pay and retain the costs and expenses attending such sale, and all counsel fees and other expenses incurred by it or them in reference to the same, and a reasonable compensation for its or their own services in the premises, and also any balance which may be due to it or them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by it or them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management, and shall apply the residue of the proceeds of such sale or so much thereof as may be necessary to the payment of the whole amount of principal and in-

terest which shall then be owing and unpaid upon the bonds secured hereby or any of them, whether the said principal, by the tenor of the said bonds, be then due or yet to become due; and in case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds they shall be paid ratably in proportion to the amounts owing and unpaid upon them respectively and without discrimination as between principal and interest and without preference of the holder of any one bond or interest warrant over any of the others, and any surplus which may remain after the full payment of the principal and interest of all of the said bonds shall be paid over to the said party of the first part or its successors or assigns upon lawful demand being made therefor.

And it is hereby further provided, declared, granted, and agreed that, upon the happening of such event or events as is or are hereinbefore declared, agreed, or provided to authorize the said party of the second part or its successors to sell the said premises, estates, franchises, rights, privileges, and property or to take the requisite proceedings to that end, the said party of the second part or its successors shall be entitled, in its or their discretion, instead of taking proceedings for and making sale of said premises, estates, franchises, rights, privileges, and property under and in virtue of the power of sale hereinbefore contained, to proceed by bill in equity or other appropriate proceedings in any court or courts of competent
64 jurisdiction to foreclose this mortgage or enforce the rights, liens, and securities of the trustee or trustees and the bondholders thereunder; and thereupon said trustee or trustees shall be entitled to have the said premises, estates, franchises, rights, privileges, and property hereby granted or conveyed or intended so to be sold by judicial sale under the order or decree of such court or courts for or towards the satisfaction of the principal and interest due or owing upon the then outstanding general mortgage bonds issued under or entitled to the benefit of the security of this mortgage, and for the enforcement of the rights, liens, and securities of the trustee or trustees and the bondholders; and in case of such judicial sale the net proceeds thereof shall be applicable and distributable in like manner as hereinbefore provided in respect of the net proceeds of a sale of such mortgaged premises and properties, rights and franchises, under and in virtue of the power of sale hereinbefore contained; and all the stipulations and provisions in this indenture contained with reference to or consequent upon a sale of such mortgaged premises and properties, rights, immunities, and franchises, when or if sold under said power of sale, shall be applicable and applied as far and as nearly as may be in case of such judicial sale being made under the order or decree of the court.

And it is hereby further provided, declared, and agreed that in case of such sale as is hereinbefore authorized being made by the party of the second part or its successors in said trust, or in case of any judicial sale being made of the said premises, properties, rights, and franchises hereby mortgaged or any part thereof, in enforcement of the mortgage lien hereby created the purchaser or pur-

chasers at such sale shall be entitled, in making settlement for and payment of the purchase-money bidden at such sale, to turn in or use towards the payment of such purchase-money the bonds and matured and unpaid interest warrants held by such purchaser or purchasers to or towards the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds and matured and unpaid interest warrants or the amount so turned in or used of the same for such purpose at such sum as would be payable out of the net proceeds of such sale to such purchaser or purchasers as holder or holders of such bonds and matured and unpaid interest warrants for his or their just share or proportion of such net proceeds of sale upon due apportionment of and concerning such net proceeds.

And the said party of the first part, for itself, its successors, and assigns, doth hereby covenant, grant, and agree to and with the said party of the second part and its successors in the trust and to and with the respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured, or any of them, that the said party of the first part, its successors and assigns, shall and will at any time and from time to time hereafter, upon request, make, do, execute, and deliver all such further and other acts, deeds, and things as shall be reasonably advised, devised, or required to effectuate the intention of these presents and to assure and confirm to the said party of the second part or its successors all and singular the property and estate, real and personal, hereinbefore described and hereby intended to be granted, and so as to render the same, and especially such portions thereof as shall be hereafter acquired by the said party of the first part or its successors, available for the security and satisfaction of the said bonds, according to the intent and purpose herein expressed.

And it is hereby further provided, covenanted, declared, and agreed that the party of the second part and its successors in the trust hereby created are, from time to time, upon the request of the party of the first part, its successors or assigns, to authenticate and certify as issued hereunder and to deliver to the party of the first part, its successors or assigns, bonds of said party of the first part or its successors of the general form and tenor above set forth, to amounts which shall aggregate ten thousand dollars for each mile of railway of the party of the first part already constructed, and thereafter to amounts which shall aggregate ten thousand dollars for each mile of railway hereafter constructed by said party of the first part or its successors and included in the lines of railway, built or to be built, which are mortgaged by said indenture of mortgage dated the 16th day of May, 1881, and in respect of which bonds might be issued under said last-mentioned mortgage, and also to amounts which shall aggregate twenty-five thousand dollars for each mile of railway hereafter con-
65 structed by said party of the first part or its successors and not included within the lines of railway, built or to be built, which are mortgaged by said indenture of mortgage dated the 16th day of May, 1881, or in respect of which bonds could not be lawfully

issued under said last-mentioned indenture of mortgage, and that the certificate of the president of said party of the first part or its successors to the facts entitling the party of the first part or its successors to receive such bonds under the foregoing clause hereof shall be sufficient evidence of such facts and shall fully protect the said party of the second part or its successors in respect to the authentication, certification, and delivery of said bonds; and it is further provided, declared, covenanted, and agreed that from time to time as and when the party of the first part or its successors shall deposit with the said party of the second part or its successors in the trust created hereby, either in a canceled condition or to be held as collateral security, upon such terms and subject to such conditions and limitations as the party of the first part or its successors may from time to time prescribe, to the bonds issued or to be issued under this indenture, a bond or bonds issued under and secured by the said indenture of mortgage bearing date the 15th day of September, 1879, against which no bond has been issued under said indenture of mortgage bearing date the 16th day of May, 1881, or a bond or bonds issued under and secured by the said indenture of mortgage bearing date the 16th day of May, 1881, and from time to time as and when any bond or bonds issued under said mortgage bearing date the 16th day of May, 1881, shall be purchased by the trustee thereunder and canceled, then the party of the second part or its successors in the trust created hereby shall authenticate and certify as issued hereunder and deliver to the party of the first part, its successors or assigns, bonds for the like amount, at their par or face value, with those so deposited or so purchased and canceled. The aggregate amount of bonds at any time outstanding under said indenture of mortgage dated the 15th day of September, 1879, and the said indenture of mortgage dated the 16th day of May, 1881, and under this indenture of mortgage (but excluding, however, from computation such of said bonds secured by said mortgages bearing date the 15th day of September, 1879, and the 16th day of May, 1881, as may have been canceled or as may have been received in exchange by the trustee of said mortgage dated the 16th day of May, 1881, as therein provided, or as may have been received on deposit by the trustee of this mortgage under the provisions hereinabove contained in respect to the issue of bonds secured by such respective mortgages on receiving in exchange or on the deposit of bonds issued under and secured by previous mortgages), shall not exceed twenty-five thousand dollars per mile of the lines of constructed railway of the party of the first part or its successors then in operation and mortgaged hereby: Provided, however, that nothing herein contained shall prevent the party of the second part and its successors from authenticating, certifying, and delivering to said party of the first part, its successors or assigns, bonds in advance of such constructed railway in case the proceeds of the sale of such bonds issued in advance of such constructed railway shall, simultaneously with the delivery of such bonds to the party of the first part, its successors or assigns, be deposited with the trustee or trustees hereunder, to be delivered to the party of the first part, its

successors or assigns, only from time to time, as and when, under the foregoing provisions hereof, it or they would have become entitled to receive the bonds represented by such deposited proceeds, and until such delivery of such proceeds to said party of the first part, its successors or assigns, the same shall be held by the said trustee or trustees as further collateral security to all the bonds outstanding hereunder.

It is understood and agreed that at any time and from time to time, in case no default exists in the payment of interest on the bonds issued under this indenture, the trustee hereunder shall from time to time, as they mature, cancel and deliver to the party of the first part, its successors and assigns, the corresponding coupons or interest warrants of such of the bonds of the series of September 15, 1879, or of the series of May 16, 1881, as may have been deposited with it or them under the provisions of this trust as collateral security as hereinabove provided, and at the request of the party of the first part, its successors or assigns, the whole or any part of the bonds so deposited with the trustee hereunder, with the coupons or interest warrants appertaining thereto, shall be canceled.

66 And it is hereby further provided, declared, and agreed that any vacancy in the office of trustee hereunder may be permanently filled by the appointment of a new trustee or new trustees by an instrument or concurrent instruments in writing executed under the hands and seals of the holders of a majority in interest of the then outstanding bonds secured hereby or their attorneys-in-fact thereunto authorized, but that the board of directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above described.

And it is hereby covenanted and agreed that any new trustee or new trustees appointed as aforesaid, whether by a permanent or temporary appointment, shall immediately upon its, his, or their appointment and without any further act, deed, or conveyance become and be vested with all of the estates, trusts, rights, powers, and duties of the trustee or trustees in whose place it, he, or they shall have been appointed; but nevertheless the respective parties hereto and their respective successors and assigns shall and will, upon request, make, execute, and deliver all such releases, conveyances, and assurances as shall be appropriate to vest in and confirm and assure to such new trustee or new trustees such estates, trusts, rights, powers, and duties, according to the intent above expressed.

And the said party of the second part does hereby accept the trust conferred upon it by these presents, but with the understanding, and it is hereby expressly provided and agreed, that it shall not be liable or accountable for the acts, defaults, or neglect of any agent or agents who may in good faith and with reasonable discretion be appointed under and by virtue of or for the purposes of these presents to do any of the matters or things herein provided for, and that no other liability or responsibility shall under any circumstances be borne by or attach to it than for the exercise of reasonable diligence only

in the performance of the said trusts when action on its part for that purpose shall become necessary.

In witness whereof the parties hereto have caused their respective seals to be hereunto affixed and attested by their secretaries and the Texas Central Railway Company signs these presents by its vice-president and the said trust company by its president the day and year first above written.

67 STATE OF TEXAS, } ss:
County of Harris, }

Be it remembered that on this 15th day of October, in the year of our Lord one thousand eight hundred and eighty-four, before me, J. C. Kidd, a duly appointed notary public in and for the county of Harris, State of Texas, personally appeared J. Waldo, vice-president of the Texas Central Railway Company, and Horace Hall, secretary of the same company, to me respectively personally known and known to me to be such officers of the said company, who, being by me severally duly sworn, did depose and say that they, the said J. Waldo and the said Horace Hall, reside in Houston, in the State of Texas, and that he, the said J. Waldo, is the vice-president and he, the said Horace Hall, is the secretary of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by order of the board of directors of the said company, and that they, the said J. Waldo and Horace Hall, signed their names thereto by the like order as vice-president and secretary of said company respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 15th day of October, one thousand eight hundred and eighty-four.

[SEAL.] (Signed) J. C. KIDD,
Notary Public.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 22nd day of October, in the year of our Lord one thousand eight hundred and eighty-four, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Texas in and for the State of New York, residing in said city and county of New York, personally appeared Thomas Hillhouse, president of the Metropolitan Trust Company of the City of New York, and Walter J. Brittin, secretary of the same company, to me respectively personally known and known to me to be such officers of the said company, who, being by me severally duly sworn, did depose and say that he, said Thomas Hillhouse, resides in the city of New York, in the State of New York, and that he, said Walter J. Brittin, resides in Jersey City, in the State of New Jersey; that he, said Thomas Hillhouse, is the president and he, said Walter J. Brittin, is the secretary of the said company; that they know the corporate

seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by authority of the trustees of the said company, and that they, the said Thomas Hillhouse and Walter J. Brittin, signed their names thereto by the like authority as president and secretary of said company respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 22nd day of October, one thousand eight hundred and eighty-four.

[SEAL.] (Signed) WILLIAM SHILLABER,
Notary Public and Commissioner for Texas in New York.

The foregoing is a correct copy of the original mortgage given by the Texas Central Railway Company to the Metropolitan Trust Co. of New York on October 1st, 1884, & which original mortgage is now on file in the office of the Co.

[SEAL.] H. HALL,
Sec'y Tex. Central R'y Co.

68 [Endorsed:] Exhibit No. 3. Filed April 2, 1885. J. H. Finks, clerk.

4. Copy for filing. The Texas Central R'y Comp'y to the Metropolitan Trust Co. of the City of New York. General mortgage.

69 *Notice of Motion to Appoint Receiver.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY.
No. 21, Equity.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

To the Texas Central Railway Company, through its proper officer:

Please to take notice that we shall move for the appointment of one or more receivers, in accordance with the prayer of the bill of complaint filed in the above-entitled cause, said motion to be made before the Hon. Don A. Pardee, United States circuit judge in and for the fifth circuit, at his chambers, in the city of New Orleans, in the United States custom-house, on Saturday next, April 4, 1885, at 10 o'clock a. m., at which time and place you will please appear and take such action as you may deem proper.

FARRAR & KRUTTSCHNITT,
Counsel and Solicitors for Complainant.

70 Ernest B. Kruttschnitt, being sworn, deposes and says that he served a duplicate of the above notice on the Texas Central Railway Company by handing the same to J. Waldo, vice-presi-

dent of said company, in person, at the city of Houston, on the 3d day of April, 1885, the president of said company being absent from the State of Texas at time of service.

E. B. KRUTTSCHNITT.

Sworn to and subscribed before me this 4th day of April, 1885.

[L. S.] ALPHONSE PHILLIPS,
Notary Public.

Endorsed, to wit: "No. 21, Equity. U. S. circuit court, northern district of Texas, at Waco. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* Texas Central Railway Company. Notice of motion to appoint receiver. Filed April 4, 1885. J. H. Finks, clerk."

A true copy.
Attest:
____ ____,
Clerk U. S. Circuit Court, N. D., Texas, at Waco.

71 *Appearance of Defendant in Answer to Notice for Appointment of Receivers.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Equity.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

In the above entitled and numbered cause comes the defendant, by its attorneys, and, making appearance in answer to the notice for the appointment of one or more receivers in the above-entitled cause, served the third day of April, 1885, submits said motion for such action of the court as to it may seem just and equitable.

BAKER, BOTTS & BAKER,
Solicitors for Defendant.

72 Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* The Texas Central Railway Company. Appearance of defendant in answer to notice for appointment of receiver. Filed April 4, 1885. J. H. Finks, clerk.

A true copy.
Attest:
____ ____,
Clerk U. S. Circuit Court, N. D. Texas, at Waco.

73 *Affidavits of Waldo and Others.*

STATE OF TEXAS, }
County of Harris. }

Personally came and appeared before me, the undersigned authority, J. Waldo, who, being duly sworn, deposes and says that he is now and has been for some time past the vice-president of the Texas Central Railway Company; that he has read the bill filed by Morgan's Louisiana & Texas Railroad and Steamship Company in the circuit court of the United States for the northern district of Texas and knows the contents thereof, and that the averments of the said bill are substantially true. Affiant further declares that he believes it to be to the interest of all parties concerned that a receiver should be appointed to said Texas Central Railway Company, and that the present receivership of the Houston & Texas Central Railway Company should be extended over the Texas Central Railway Company, as the latter company is not able to support the costs and expenses of an independent receivership, and as an independent receivership would interfere with its harmonious operating relations with the Houston & Texas Central Railway Company.

J. WALDO.

Sworn to and subscribed before me this 2d day of April, 1885.

[L. S.] A. K. TAYLOR,
U. S. Commissioner, East. Dist. of Texas, at Houston, Texas.

74 STATE OF TEXAS, }
County of Harris. }

Personally came and appeared before me, the undersigned authority, E. W. Cave, who, being duly sworn, deposes and says that he is now and has for some time past been the treasurer of the Texas Central Railway Company; that he has read the bill filed by Morgan's Louisiana & Texas Railroad and Steamship Company in the circuit court of the United States for the northern district of Texas and knows the contents thereof, and that the averments of the said bill are substantially true. Affiant further declares that he believes it to be to the interest of all parties concerned that a receiver should be appointed to said Texas Central Railway Company, and that the present receivership of the Houston & Texas Central Railway Company should be extended over the Texas Central Railway Company, as the latter is not able to support the expenses and cost of an independent receivership, and as an independent receivership would interfere with its harmonious operating relations with the Houston & Texas Central Railway Company.

E. W. CAVE.

Sworn to and subscribed before me this 2d day of April, 1885.

A. K. TAYLOR,
[L. S.] *U. S. Commissioner, East. Dist. of Texas, at Houston, Texas.*

STATE OF TEXAS, }
County of Harris. }

Personally came and appeared before me, the undersigned
75 authority, A. H. Swanson, who, being duly sworn, deposes and says that he is now and has for some time been the general transportation manager of the Texas Central Railway Company; that he has read the bill filed by Morgan's Louisiana & Texas Railroad and Steamship Company in the circuit court of the United States for the northern district of Texas and knows the contents thereof, and that the averments of the said bill are substantially true. Affiant further declares that he believes it to be to the interest of all parties concerned that a receiver should be appointed to said Texas Central Railway Company, and that the present receivership of the Houston & Texas Central Railway Company should be extended over the Texas Central Railway Company, as the latter company is not able to support the costs and expenses of an independent receivership, and as an independent receivership would interfere with its harmonious operating relations with the Houston & Texas Central Railway Company.

A. H. SWANSON.

Sworn to and subscribed before me this 2d day of April, 1885.

A. K. TAYLOR,
[L. S.] *U. S. Commissioner, East. Dist. of Texas, at Houston, Texas.*

Endorsed, to wit: "No. 21. U. S. circuit court, northern district of Texas. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Affidavits of
76 Waldo and others. Filed April 4, 1885. J. H. Finks, clerk."

A true copy.
Attest:
____ ____,
Clerk U. S. Circuit Court, N. D. of Texas, at Waco.

77 *Order Appointing Receivers.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Ch. D.

In the Circuit Court of the United States for the Northern District of Texas, sitting at Waco.

Before the Hon. Don A. Pardee, United States circuit judge for the said circuit, sitting at chambers, in the city of New Orleans, La.

This cause came on to be heard this day in chambers upon the

application of the complainants for the appointment of a receiver, and was argued by counsel, Messrs. Farrar & Kruttschnitt for the complainants and Messrs. Baker, Botts & Baker for the defendant, and the court being sufficiently advised upon the motion of the complainant for the appointment of a receiver this day submitted to the court upon the bill, exhibits, and affidavits filed by the complainant—

It is ordered, adjudged, and decreed by the court that Benjamin G. Clarke, of New York, and Charles Dillingham, of New
78 Orleans, La., upon their giving bond in the sum of one hundred thousand dollars, be appointed joint receivers herein to take possession of the money and assets, real and personal, road-bed, road, iron, ties, lands, rights of way, rolling stock, leases, franchises, and all other rights of property whatsoever of the the said Texas Central Railway Company, wherever the same may be found, with power to manage, control, and exercise all the franchises whatsoever of the said railway company, and with power to prosecute, defend, and continue all suits brought by said company or against the said company, whether heretofore or hereafter commenced or whether in the name of the said railway company or otherwise; to defend all suits brought against them as such joint receivers or affecting their joint receivership, and to bring such suits in the name of the said company as they may be advised by counsel to be necessary and proper in the discharge of the duties of their office, and for acquiring, securing, and protecting the assets, franchises, property, and rights of the said railway company.

And it is further ordered, adjudged, and decreed that the said defendant, The Texas Central Railway Company, transfer and deliver over to the said joint receivers on oath, under the direction of the special master hereinafter appointed, all of the property, real and personal, wheresoever found, and all other equitable interests and things in action and other effects which belong to or were held in trust for the said defendant railway company or in which it had any beneficial interest, in the same condition that they were in at the time of exhibiting the said bill of complaint in this case, except as far as necessarily changed in the proper management of the said railway or in which it now has any such interest, and that the said defendants deliver over in like manner all books, vouchers, or other effects relating thereto.

79 And it is further ordered that the said joint receivers have full power and authority to inquire after, receive, and take possession of all such property, equitable interests, and things in action, and other effects, and for that purpose to examine the said defendant, its officers, and such other persons as they may deem proper, on oath before the said master, from time to time as they may deem necessary.

And it is further ordered that the said Benjamin G. Clarke and Charles Dillingham, joint receivers, are hereby directed and required, as such receivers, to keep a full and accurate account of all their acts and doings as such receivers, and to report the same to this court from time to time as they may be hereafter directed by order

of this honorable court, and in the meantime and until another order of this court be rendered to run, operate, and manage the railways of the said defendant railway company and to manage and control all of the said property and affairs of the said defendant railway company; and the said joint receivers are hereby empowered and directed to employ such counsel and attorneys as they may deem necessary to manage in their behalf such suits and other affairs as have arisen or may arise, and to advise the said receivers in relation to the performance of their duties therein.

And it is further ordered, adjudged, and decreed that the said receivers may use the moneys of the said defendant railway company for any and all of the purposes stated in the foregoing provisions.

And it is further ordered, adjudged, and decreed that John G. Winter, Esq., attorney-at-law, of Waco, Texas, be appointed special master in chancery herein, and that he be clothed with all the powers of a master in chancery of this court as to all matters herein referred to him or that may hereafter be referred to him.

80 It is further ordered, adjudged, and decreed that any of the parties to this bill may, if they so desire, have leave to apply to the special master above named to have the bond of the joint receivers hereinabove fixed, increased, or diminished, according as they may be advised.

Thus done and signed, in the city of New Orleans, La., at chambers, this 4th day of April, A. D. 1885.

DON A. PARDEE, *Judge.*

Endorsed, to wit: "No. 21. U. S. circuit court, northern district of Texas. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Order appointing receivers. Filed April 6, 1885. J. H. Finks, clerk."

A true copy.

Attest: ——— ———,

Clerk U. S. Circuit Court, N. D. of Texas, at Waco.

81 *Memorandum of Offerings Made Before Hon. Don A. Pardee, at Chambers, this 4th Day of April, 1865, on Application to Appoint Receivers in this Cause.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Ch. Docket.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Complainant offers—

1. Bill of complaint.
2. Exhibits 1, 2, and 3 filed with bill.
3. Appearance of defendant.

4. Notice of application.
5. Affidavits of J. Waldo, E. W. Cave, and A. C. Swanson.
The clerk at Waco will file the above as of date April 4, 1885.
April 4th, 1885.

DON A. PARDEE, *Judge.*

81½ Endorsed, to wit: "U. S. circuit court, northern district of Texas. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* Texas Central Railway Company. Memorandum of offerings. Filed April 6, 1885. J. H. Finks, clerk."

A true copy.
Attest:

____ ____,
Clerk U. S. Circuit Court, N. D. Texas, at Waco.

82 *Appearance as Solicitors for the Defendants.*

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } In Equity, No. 21.

To J. H. Finks, Esq., clerk of said court:

You will please enter our appearance as solicitors for the defendant in the above entitled and numbered cause.

BAKER, BOTTS & BAKER,
Solicitors for Defendants.

Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* The Texas Central Railway Company. Appearance for defendants. Baker, Botts & Baker, solicitors. Filed May 2d, 1885. J. H. Finks, clerk."

A true copy.
Attest:

____ ____,
Clerk U. S. Circuit Court, N. D. Texas, at Waco.

83 United States Circuit Court for the Northern District of Texas, Fifth Judicial Circuit.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN & TRUST COMPANY, Trustee, and The Metropolitan Trust Company, Trustee, Defendants. } No. 21, Equity.

Farrar & Kruttschnitt, counsel and solicitors for complainant.

Filed May 14, 1885.

J. H. FINKS,
Clerk U. S. Circuit Court, N. D. Texas.

84 U. S. Circuit Court for the Northern District of Texas, Fifth Judicial Circuit.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY
versus
THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN and TRUST COMPANY, Trustee, and The Metropolitan Trust Company, Trustee, Defendants.

Equity, No. 21.

To the honorable the judges of the said court:

Morgan's Louisiana & Texas Railroad & Steamship Company, complainant herein, a corporation organized under the laws of the State of Louisiana and a citizen of the said State, with leave of the court first obtained, presents this its amended and supplemental bill against the Texas Central Railway Company, the original defendant herein, a citizen of the State of Texas, having its
85 principal office in this district, and against the Farmers' Loan and Trust Company, trustee, of New York, a corporation organized under the laws of the State of New York and a citizen of the said State, and against the Metropolitan Trust Company, trustee, of New York, a corporrtion organized under the laws of the State of New York and a citizen of the said State.

And thereupon your orator complains and says:

I. That heretofore, to wit, on the 2d day of April, 1885, your orator filed its original bill in this case making the Texas Central Railway Company party defendant, and averring the matters and things therein set forth; all of which matters and things your orator reiterates and reavers as fully as though they were again herein set forth *verbatim*.

II. That, as appears by the said averments, the said Farmers' Loan and Trust Company is the trustee under the following deeds of trust therein specially set forth, viz:

(*a*.) The deed of trust and mortgage executed by the said Texas Central Railway Company on the 15th day of September, 1879, described in the sixth paragraph of said original bill, and under which bonds of said railway company, to the amount of $2,145,000 have been issued and are outstanding, secured by mortgage upon that portion of the line of railway of said railway company ex-
86 tending from the town of Ross, in McLennan county, to the town of Cisco, in Eastland county.

(*b*.) The deed of trust and mortgage executed by said company on the 16th day of May, 1884, described in the sixth paragraph of said original bill, and under which bonds of said railway company to the amount of $1,254,000 have been issued and are outstanding, secured by mortgage upon the main and branch lines of said railway, as in said original bill detailed.

III. That, as appears by the averments of the said original bill, said Metropolitan Trust Company is the trustee under the deed of trust and mortgage executed by said railway company on the 1st

of October, 1884, described in the tenth paragraph of said original bill, and granting a mortgage upon all lines of railway of said railway company, constructed and to be constructed, and also other property, as in said original bill detailed.

IV. That, as charged by said original bill, said defendant railway company is indebted unto your orator in the sum of $762,000 or thereabouts, and which amount, as also the amounts due other persons similarly situated, are equitable liens upon all of the revenues of the said defendant railway company, and entitled to be paid out of the same before anything is paid to the holders of the various mortgage bonds issued under the two several deeds of trust
87 to said Farmers' Loan and Trust Company aforesaid and represented by said trust company as trustee; and your orator further charges that said indebtedness is an equitable lien upon all of the property of the said company and entitled to be paid in case of sale out of the proceeds of said sale before any money is paid to the holders of the said mortgage bonds.

That the said indebtedness should and of right ought to have been paid by the said railway company out of its annual earnings, and that the said earnings were ample and sufficient to have paid all of the said indebtedness; that, instead of paying the said debts incurred for labor, material, betterments, and service necessary for the operation of the said railway, and to keep the same in proper condition of repair and running order, the said defendant railway company expended its revenues in paying the interest on the said mortgage bonds, and leaving your orator and others similarly situated unpaid; and that they are entitled in equity and good conscience to stand in place and stead of the said mortgage creditors for the amounts that they have so respectively received, and to have satisfied their claims out of the property and assets of the said defendant railway company or out of the proceeds of any sale thereof.

V. Your orator is informed and believes and so charges
88 that it is the intention of the trustee aforesaid to seek a foreclosure of the aforesaid mortgages and deeds of trust and to bring about sales of all property and assets of the said Texas Central Railway Company, which sales they will endeavor to bring about before your orator and those similarly situated can obtain payment of their equitable claims out of the net earnings of the said company; that the said trustee will attempt to have the said sales made in such a way as to dismember the property of the said Texas Central Railway Company by cutting off and selling separately from each other the two branches or divisions of said railway, one whereof extends from Ross to Albany and the other from Garrett to Roberts, so as to sacrifice said two divisions or branches to the irreparable injury and damage of the creditors of said company and of all persons in interest, except themselves, they themselves intending to purchase the said dismembered properties of the said railway for a small proportion of their value in the present depressed financial condition of the country.

VI. Your orator further avers that it holds as collateral security, as in said original bill averred, certain certificates for bonds, which

constitute a full, complete, perfect, and equitable mortgage and a lien upon said railway and upon all of the property, incomes, tolls, profits in said deed of trust to said Metropolitan Trust Com-
89 pany described in favor of the holder or holders of the notes in said original bill described and of said certificates for bonds.

Wherefore your orator prays that the said Texas Central Railway Company may be notified of the filing of this amended and supplementary bill, and that the most gracious writ of subpœna may issue, directed to the said Farmers' Loan and Trust Company, trustee as aforesaid, and to the said Metropolitan Trust Company, trustee as aforesaid, commanding them and each of them to appear in this honorable court, on a day to be named therein, and answer make to the original bill herein filed, as well as this amended and supplemental bill, and to abide the judgment of the court in the premises.

And, as said Farmers' Loan and Trust Company, trustee, and said Metropolitan Trust Company, trustee, are not to be found in this district, your orator prays that your honors will, by special order, provide for the mode and manner of serving such subpœna upon each of them.

And your orator, in addition to the original prayer, further prays:

1st. That an account may be taken, under the direction of your honors, of the several amounts due to your orator by the said Texas Central Railway Company, as also of all sums respectively due to all the other parties, creditors of the said company, who may
90 join your orator in the prosecution of this suit, or who may intervene herein for the protection of their claims.

2d. That an account be also taken, under the direction of this honorable court, as to the dates and the amounts of money paid by the said defendant railway company to any of the mortgagees in the said two trust deeds to said Farmers' Loan and Trust Company herein heretofore described, or to any holders of the bonds issued under the said deeds of trust, and the different times when paid, the amounts paid for interest on said bonds, and on which of the said bonds, as well as all moneys paid into the sinking funds specified in the said mortgages or deeds of trust, and what amounts arising out of the sale of any of real estate belonging to the said railway company have been paid to the said bondholders or deposited in trust for their benefit; that the said account be taken so as to show to this honorable court at what time or times and what proportion of the said amounts were paid out of the current revenues of the said company in the absence of any earnings, and what amounts and proportions were so paid out of the net earnings of the said defendant railway company.

3d. That an account may be taken of all the liens and encumbrances on the said property of the said railway company, showing the amounts and rank of each, and the property affected by
91 each, and also an account of all the assets of every kind and nature belonging to the said railway company.

4th. That for the amounts found due on such accounting to your orator and to such intervening similarly situated persons there be

a decree against the railway company and against all of the defendants, declaring that the sums so due are liens upon the net earnings of the said railway company and upon all of its property superior in rank to the claims of the said trustees and of the mortgage bonds and coupons issued under the said various deeds of trust.

5th. That the net earnings of the said railway company in the hands of the receivers appointed in this case be first devoted to the payment of the amounts so decreed, and that if they be not sufficient within a reasonable time to pay the said amounts, then that a sale of the property and assets of the said railway company may be ordered and had in such manner and under such terms and conditions as may be to the best interests of all parties concerned, and that out of the proceeds of the said sale the amounts so decreed to your orator may be first paid in preference to any amounts due on the said mortgage bonds and coupons issued under the said two deeds of trust aforesaid to said Farmers' Loan and Trust Company.

6th. That should a sale of the said defendant railway company's property be required to satisfy the decree of this honorable
92 court your orator prays that to realize the highest price for the said property so as to secure the largest amount of indebtedness, and to satisfy the demands of your orator and of the other creditors of the said defendant railway company, and all of the said rights, privileges, and mortgages of the said railway company, that its several tracks and pieces of land which constitute the site of the railroad, its work-shops, depots, outhouses, and other structures and buildings appurtenant to the said railway, together with its rolling stock, equipment, materials, and tools of every kind and nature appurtenant thereto, shall be sold in bulk and as one undivided whole, due provision being made for the calculation of the whole value and the proportional value of the two divisions thereof and the amounts due thereon, so that the proceeds of the sale may be equitably divided among the several parties having prior liens upon the whole or either of its two divisions; that the town lots and other real estate of the said defendant railway company be ordered to be sold, and that the same be sold in such manner and at such terms, for cash or on credit or for part cash and part credit, as that the best price may be secured for the same.

7th. That for the amount found due on such accounting to your orator as holder of the certificates or obligations of said Texas Central Railway Company, whereby it bound itself to deliver to said Houston & Texas Central Railway Company or order said bonds, as soon as executed and signed by said Metropolitan Trust Com-
93 pany, trustee, there be a decree against said Texas Central Railway Company and against all of the defendants, declaring that the sum so due is a full, complete, perfect, and equitable mortgage and lien upon said railway and upon all of the property, incomes, tolls, and profits in said deed of trust of October 1st, 1885, described, and that out of the proceeds of any sale which may be made to satisfy any decree of this honorable court your orator's claim for said amount be paid and satisfied.

And your orator further prays for such other and further relief

in the premises as the case may require and as to your honors may seem meet and just.

FARRAR & KRUTTSCHNITT,
Counsel and Solicitors.

John J. Schriever, being sworn, says that he is the vice-president and acting president of Morgan's Louisiana & Texas Railroad & Steamship Company, the complainant in the above amended and supplemental bill; that he has read the same and knows the contents thereof, and the same, in so far as alleged of complainant's own knowledge, are true, and as to the rest the same is true, to the best of affiant's knowledge and belief.

JOHN G. SCHRIEVER.

Sworn to and subscribed before me this 12th day of May, 1885.

ALPHONSE V. PHILLIPS,
[SEAL.] *Notary Public.*

94 *Order.*

It is ordered that the within supplemental and amended bill be filed; that the defendant, The Texas Central Railway Company, be duly notified of the filing of the same; that the writ of subpœna therein prayed for issue as prayed for, and that service of the same be made upon said Farmers' Loan & Trust Company and said Metropolitan Trust Company by the United States marshal for the southern district of New York or by any of his lawful deputies in the same manner in which said subpœna would be served upon said companies by the marshal of this district if said companies were found in the same.

New Orleans, May 12th, 1885.

DON A. PARDEE, *Judge.*

Filed May 14, 1885.

J. H. FINKS, *Clerk.*

95 Answer of the Texas Central Railway Company, as defendant, to the bill of complaint of Morgan's Louisiana & Texas Railroad and Steamship Company, complainant herein. Filed 2d day of April, 1885.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, Defendant.
} No. 21. In Equity.

In the United States Circuit Court, Northern District of Texas, at Waco, in the Fifth Circuit.

96 This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage which can or may be had or taken to the many errors, uncertain-

ties, and other imperfections in the said complainant's bill of complaint, for answer thereto or unto such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, answering, says:

I, II, III and IV.

The defendant admits the corporate capacity in which complainant sues, and that this defendant is a corporation created and existing under its original and amended charters and for the objects and purposes set forth in said complainant's bill; and, further, that it has built and is now the owner of the railways named and described by complainant, which are of about the aggregate mileage in length as complainant alleges in its said bill.

V.

It admits that it is the owner of some town lots on the line of its said road, and that it owns and has the equipment stated by complainant.

VI and VII.

It admits that on or about the 15th day of September, 1879, it executed and delivered to the Farmers' Loan and Trust Company of the City and State of New York, as trustee, its trust deed on its line of road from Ross station, in McLennan county, to a point at or near the centre of Eastland county, a distance of about one hundred and thirty miles, but on completion of the road the distance proved to be one hundred and forty-three miles, to secure its bonds issued on that portion of its road, appurtenances, and franchises at the rate of fifteen thousand dollars ($15,000) per mile of com-
97 pleted road. It admits that it issued under that mortgage its bonds to the amount of two million one hundred and forty-five thousand dollars ($2,145,000), which were disposed of and are now outstanding: and, further, that said mortgage contained provisions in substance the same as alleged in complainant's bill, and that Exhibit No. 1 of complainant's said bill is substantially, if not literally, a copy of said mortgage.

VIII and IX.

Further answering, defendant admits that on May 16, 1881, and after the amendment of its charter, as alleged by complainant, it made and delivered to said Farmers' Loan and Trust Company its certain other trust deed or mortgage on its main line of railway built and to be built, beginning at the town of Ross, in McLennan county, and extending through the counties named in complainant's bill to a point on the northern boundary of the State of Texas between the 101st and 102d meridians of west longtitude, a distance of about three hundred and seventy-five miles, and on its branch roads authorized by its said amended charter. Said mortgage also included all defendant's rights of way, rolling stock, equipment, material,

and franchises, and all property which defendant might thereafter acquire pertaining to the operation of its railway as embraced in said mortgage. It also admits that said mortgage was intended to secure its bonds in the sum of fifteen thousand dollars ($15,000) for each mile of completed road, and that one of the objects in making said mortgage was for the retirement and exchange of its series of bonds issued under its mortgage of September 15, 1879, aforesaid, and that under said mortgage of May 16, 1881, it issued and has now outstanding one million two hundred and fifty-four thousand dollars in its bonds, and that Exhibit No. 2 in complainant's
98 bill is substantially, if not literally, a copy of the last-named mortgage.

X.

Defendant further admits that afterwards, on — day of October, 1884, it made and delivered to the Metropolitan Trust Company its certain other mortgage, to be known as its general mortgage, upon all its railways and railway lines constructed and to be constructed and all the appurtenances, equipments, repair shops and structures, whether then owned or thereafter acquired, earnings and income, privileges and franchises, of its said railways, and that the issue of bonds thereunder and intended thereby to be secured was limited as therein set forth, subject to said mortgage of May 16, 1881, as complainant alleges, and that Exhibit No. 3 to complainant's bill is substantially, if not literally, a copy of said mortgage.

XI.

Defendant admits that the mortgage of October, 1884, has not been recorded as yet in some of the counties through which its lines of road are projected and authorized by its charter because of the difficulties named in complainant's bill, but avers that it has been recorded in as many of said counties as it was practicable to have the same done in. It further admits that all the bonds authorized by the mortgage of October, 1884, have been signed and sealed by this defendant, and that the trustee under said mortgage refuses to certify them until said mortgage shall have been recorded in each county into which defendant's road is projected and authorized by its charter. It also admits that it is indebted to the Houston & Texas Central Railway Company in about the sum of seven hundred and sixty-two thousand dollars ($762,000) for advances
99 made as set forth in complainant's bill, and that it executed and delivered to the said Houston & Texas Central Railway Company its sixteen (16) promissory notes aggregating the amount of its indebtedness to that company as alleged by complainant, and that it did pledge to said Houston & Texas Central Railway Company 150 of its said general mortgage bonds as a security for fifteen (15) of its notes amounting to seven hundred and fifty thousand dollars ($750,000), and as a security for its note for eleven thousand nine hundred and ninety-two and $\frac{4}{100}$ dollars ($11,992.04) it pledged 36 others of its said general mortgage bonds, making the total amount thus pledged the same as that stated by complainant in its

bill. Its notes were dated and fell due as stated by complainant, and in order to perfect said pledges (said bonds not having been countersigned and certified by said trustee under said mortgage) this defendant did issue and deliver to said Houston & Texas Central Railway Company its certificates or obligations in lieu of said bonds, obligating itself to deliver them as soon as countersigned and certified by said trustee under said mortgage.

XII and XIII.

From information which defendant believes to be true it has reason to believe that complainant is holder as pledgee of all its said notes to said Houston & Texas Central Railway Company to secure complainant in some indebtedness of the Houston & Texas Central Railway Company to complainant. As to whether the facts set forth in complainant's said bill of complaint constitute an equitable mortgage upon defendant's railway and property in favor of complainant is a question of law which this defendant submits to this honorable court.

XIV.

Further answering, defendant admits that the money so
100 advanced by the Houston & Texas Central Railroad Company to this defendant was advanced at various times and were used for the purposes as alleged by complainant and aggregated about seven hundred and sixty-two thousand dollars.

XV.

It further admits that said indebtedness was contracted upon the consideration and promise of defendant to pay the same out of its earnings, and it is also true that defendant did pay out of its earnings and the money so advanced to it the coupons upon its first-mortgage bonds, in amount about the same as stated in complainant's bill.

XVI.

It is true, as complainant alleges, that defendant has no property upon which to levy an execution except that embraced in its various mortgages, and that a sale of its properties, subject to said incumbrances, would be ineffectual for the relief of its common creditors.

XVII.

This defendant admits that it is and has been for some time in embarrassed circumstances, and that its pay-rolls for January, February, and March are unpaid, unless the receivers now in charge of defendant's property have paid the same by the aid of debentures issued under order of this honorable court, and that the aggregate of said dues are about twenty thousand dollars ($20,000), as complainant alleges. It also admits that it has no money or credit upon which to raise it, and that it has neither adequate supplies, fuel, or

material. It further admits that its receipts have been growing less and less, and, so far as defendant can now see, there is no hope of their immediate increase in the future.

XVIII.

Defendant admits that its road has always been managed
101 in connection with the Houston & Texas Central railway, and that its maintenance and transportation business has been conducted by the officials of the operating department of the last-named road, but without cost or expense to defendant for such service. It admits that the Houston & Texas Central railway has lately been placed in the hands of receivers in the case and by the court named in complainant's bill.

XIX.

Defendant believes, and therefore admits to be true as stated by complainant, that the interdependence upon each other of said two railways has been such that for the mutual benefit of both said railways said interdependence should be maintained.

XX.

It is also true that the Houston & Texas Central Railway Company owns over one-third of the capital stock of defendant, and defendant admits that it is of the utmost importance to the interest of both said roads that they shall be under the management of one common head.

As to complainant's amended and supplemental bill herein, filed on the — day of May, 1885, this defendant is advised there is nothing therein alleged requiring answer or plea of this defendant which is not already averred in complainant's original bill and hereinbefore sufficiently answered.

Further answering, this defendant submits to this honorable court that none of the matters in said complainant's original bill and in its amended and supplemental bill of complaint mentioned and complained of are matters in respect to which the complainant is entitled to relief in a court of equity, and this defendant asks to have the same benefit of defence thereto as if it had demurred
102 to said complainant's bills, and it denies each and every allegation of the said original bill and of the said amended and supplemental bill not hereinbefore sufficiently answered, confessed, traversed, and avoided or denied; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall desire, and humbly prays to be herein dismissed with the reasonable costs and charges in this behalf most wrongfully sustained.

TEXAS CENTRAL RAILWAY,
By J. WALDO.

BAKER, BOTTS & BAKER,
Solicitors for Defendant.

THE STATE OF TEXAS, }
County of Harris. }

Before me, J. C. Kidd, a notary public in and for the county and State aforesaid, this day personally appeared J. Waldo, to me personally known, and on oath says he is vice-president of the defendant, Texas Central Railway Company; that he has heard the foregoing answer of said defendant read and knows its contents, and that the facts therein alleged, as far as alleged on knowledge, are true, and those stated as on information derived from others he believes to be true.

Sworn to and subscribed before me 27th day of June, 1885.

Witness my hand and notarial seal.

J. C. KIDD,

[L. S.] *Notary Public, County of Harris, Texas.*

103 Endorsed to wit: "No. 21. In equity. Morgan's Louisiana and Texas Railroad and Steamship Company, complainant, *vs.* The Texas Central Railway Company, defendant. Filed July 1, 1885. J. H. Finks, clerk."

A true copy.

Attest: ——— ———,

Clerk U. S. Circuit Court, N. D. of Texas, at Waco.

104 *Appearance of the Metropolitan Trust Company of New York. Filed July* 1, 1885.

MORGAN'S LOUISIANA & TEX. R'Y & S. S. CO. }
vs. } No. 21. In Equity.
THE TEXAS CENTRAL RAILWAY CO. }

In U. S. Circuit Court, at Waco.

Now comes the Metropolitan Trust Co. of New York, by its solicitor, and enters an appearance in this cause, reserving right to file answer at or before the rule day in August, 1885.

L. C. ALEXANDER,

Sol'r for Met. Trust Co. of New York.

105 The answer of the Metropolitan Trust Company of the City of New York (sued under the name of the Metropolitan Trust Company), trustee, to the original and amended and supplemental bill of complaint of Morgan's Louisiana and Texas Railroad and Steamship Company, complainant.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN and TRUST COMPANY, Trustee, and The Metropolitan Trust Company, Trustee, Defendants.
No. 21. In Equity.

Circuit Court of the United States for the Northern District of Texas, Fifth Judicial Circuit.

This defendant, reserving to itself all right of exception
106 to the said bill and amended and supplemental bill of complaint, for answer thereto saith:

It admits that on or about the — day of October, 1884, said Texas Central Railroad Company made and entered into a certain deed of trust with this defendant to the purport and effect as alleged in paragraph X of the original bill, and it admits each and all the allegations in said paragraph X set forth.

It further admits that, being the trustee under said deed, it refused and refuses to certify bonds thereunder until the recording of said deed shall have been completed as alleged in paragraph XI of the original bill, and further admits that said deed has not yet been recorded in all of the counties named and set forth in the charter of said Texas Central Railroad Company, or in which the mortgaged property, or some portion thereof was situated, in which the said deed had to be recorded as alleged in said paragraph XI.

It further admits that the Farmers' Loan and Trust Company is a citizen of the State of New York, as alleged in paragraph XXIV of said original bill, and that this defendant is a citizen of said State, as alleged in paragraph XXV of said original bill, and further admits, as alleged in paragraph XXV, that the complainant has no right to claim the action of this defendant in the premises for the reason that this defendant, trustee as aforesaid, has as yet issued no bonds under said deed of trust and does not recognize complainant as holder of any bonds issued under said deed of trust.

And this defendant, further answering, says that as to all the matters and things in said original bill and in said amended and supplemental bill of complaint alleged, except as hereinbefore expressly admitted, it has no knowledge or information sufficient to form a belief, and leaves the complainant to make
107 such proof thereof as it may be able to produce and as it may be advised.

And this defendant prays that it may be hence dismissed with its

reasonable costs and charges in this behalf most wrongfully sustained.

THE METROPOLITAN TRUST COMPANY
[L. S.] OF THE CITY OF NEW YORK,
By THOS. HILLHOUSE, *Pres't.*

THOS. G. HILLHOUSE AND ALEXANDER,
Solicitors for Defendant, The Metropolitan Trust Company of the City of New York.

STATE OF NEW YORK, }
Southern District of New York, } *ss:*
City and County of New York, }

On this 25th day of July, 1885, personally appeared before me Thomas Hillhouse, to me personally known, who, being by me first duly sworn, did depose and say that he is the president of the Metropolitan Trust Company of the City of New York, the defendant named in the foregoing answer; that he knows the corporate seal of said company, and that the seal affixed to said answer is the corporate seal of said company, and that the same was affixed to said answer by authority of the board of directors of said company, and that he signed said answer as president by the like authority; and he did further depose and say that he has read the foregoing answer and knows the contents thereof, and the same, in so far as alleged of his own knowledge, is true, and as to the rest it is true, to the best of his knowledge and belief.

THOS. HILLHOUSE.

Sworn to before me this 25th day of July, 1885.

H. L. BRAYNARD,
[L. S.] *Notary Public, N. Y. Co.*

108 STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that H. L. Braynard, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 27th day of July, 1885.

[L. S.] PATRICK KEENAN, *Clerk.*

We hereby consent that this answer shall be filed in this cause to have effect as if filed on Aug. 3, 1885, and as if time had been enlarged upon regular motion.

FARRAR & KRUTTSCHNITT,
Solicitors and Counsel for Complainant.

Endorsed, to wit: U. S. circuit court, N. D. of Texas, at Waco. No. 21, equity. Morgan's Louisiana and Texas Railroad and Steamship Company *vs.* The Texas Central Railroad Company *et al.* Answer of defendant, The Metropolitan Trust Company of the City of New York. Thos. G. Hillhouse and L. C. Alexander, solicitors for said defendant trust company. Filed Aug. 17, 1885. J. H. Finks, clerk.

A true copy.

Attest: ——— ———,

Clerk U. S. Circuit Court, N. D. of Texas, at Waco.

109 *Agreement as to Appearance and Answer of the Defendant, The Farmers' Loan and Trust Company. Filed August* 24, 1885.

In the Circuit Court of the United States, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } In Equity.

The Farmers' Loan and Trust Company of New York, being trustee of the first mortgage sued on in the above cause and stated in the bill to be made a party defendant on its coming into the State or otherwise, according to the practice of the court, it is now hereby agreed may enter its appearance and file its answer as a defendant in said suit.

FARRAR & KRUTTSCHNITT,
July 3d, 1885. *Sol'r's Complainant.*

Time granted F. L. & T. Co. until rule day in September to plead.

FARRAR & KRUTTSCHNITT,
Sol'r's Complainant.

110 Time granted F. L. & T. Co. until rule day in October to plead.

FARRAR & KRUTTSCHNITT,
Solicitors for Complainant.

TURNER, LEE & McCLURE,
20 Nassau St., New York;
BALLINGER, MOTT & TERRY,
Galveston, Texas,
Counsel and Solicitors for the Farmers' Loan & Trust Company.

111 United States Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Equity.

Orig'l Answer of Defendant, The Farmers' Loan and Trust Company.

Turner, Lee & McClure, 20 Nassau street, New York, and Ballinger, Mott & Terry, Galveston, Texas, solicitors and of counsel of said defendant.

1885:
Times printing establishment,
Englewood, N. J.

Filed Sept. 24, 1885.

J. H. FINKS, *Clerk.*

112 United States Circuit Court for the Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILWAY AND STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.* } No. 21. In Equity.

The answer of the defendant, The Farmers' Loan and Trust Company, to the original bill of complaint of the above-named complainant herein and the amended and supplemental bill of said complainant.

This defendant, The Farmers' Loan and Trust Company, now and at all times saving and reserving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said original bill and in the said amended and supplemental bill, or either of them, contained, for answer thereto, or to such parts thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

113 I. As to the allegations contained in the paragraphs of said original bill numbered I, II, III, IV, and V, this defendant says that its information respecting the same is of a very general character, and does not extend to matters of detail; nevertheless, this defendant is willing to admit and does admit the truth of said allegations for the purposes of this suit.

II. As to the allegations contained in paragraphs VI and VIII respectively of said original bill, this defendant says that the same are in substance true, but as to the said deeds of trust and the contents thereof this defendant prays, for greater certainty, to refer to the original instruments or to duly certified copies thereof.

III. As to the allegations of said original bill of complaint re-

specting the amounts to which bonds have been issued under the provisions of the said deeds of trust and are now outstanding, this defendant says that in pursuance of its duties as trustee and of the provisions of the deeds of trust respectively on that behalf this defendant duly certified bonds secured by the deed of September 15th, 1879, amounting to $2,145,000 of principal, and also bonds secured by the deed of May 16th, 1881, amounting to $1,254,000 of principal. A large number of those bonds are now outstanding and entitled to the benefit of the security of the said deeds of trust respectively, but how many this defendant is not informed.

IV. As to the allegations of paragraphs X, XI, and XII of the said original bill of complaint, this defendant is not informed save by said bill, and it leaves the complainant to make such proof thereof as it may be advised. It denies, on information and belief, the allegations of paragraphs XIII and XIV thereof; and this defendant further says that if any advances were made, as stated in said para-
114 graph XIV, they were, as this defendant is informed and believes, payments which should in equity be imputed to the complainant herein, for reasons and because of facts hereinafter set forth, as well as others.

V. This defendant denies, on information and belief, the allegations in said bills or either of them contained to the effect that the indebtedness therein mentioned or any indebtedness was contracted by the defendant railway company upon the consideration of its promise to pay the same out of the earnings of its railway, and that such supposed indebtedness was and is in equity and good conscience a first lien and charge upon the income and property of the railway. As to whether said railway company has paid any indebtedness it may owe or may have owed to the complainant, this defendant is not informed, but it denies, on information and belief, that it has used a large amount of its earnings for making any payments of coupons upon its first-mortgage bonds, which payments the holders of the coupons were not entitled to receive; and this defendant is advised and submits to the court not only that the complainant has no lien on the earnings or income or other property of the defendant railway company (this defendant wholly denying the existence of any such lien), but, further, that the complainant in equity and good conscience is estopped from asserting any such claim. The Houston and Texas Central Railway Company and the complainant herein are, as will hereinafter more fully be shown, the owners of the defendant railway company and of all its property, holding the same as a mere appendage to the Houston and Texas Central road. The mortgages executed by the defendant railway company were, in fact, mortgages procured to be made by the parties controlling the complainant herein and the Houston and Texas Central Railway Company, and were made for the
115 purpose of building and constructing the railway of the defendant railway company, and the complainant and the parties in interest represented by the complainant cannot, nor can any of them, be permitted in equity and good conscience to set up any pretended rights or assume any pretended character as creditors,

and thereby destroy and render valueless the security held by this defendant as trustee for bondholders.

VI. As to the value, present and future, of the certificates for bonds which the complainant alleges that it holds as collateral security, this defendant is not informed. It admits, on information and belief, that the defendant railway company has no property upon which any execution upon any judgment that might be obtained against it could be levied except the properties covered by the mortgages to this defendant. It admits that the defendant railway company is in embarrassed circumstances, but it has no knowledge or information as to the correctness of the details set forth in paragraph XVII of the original bill of complaint. It admits that the Texas Central Railway Company was originally built relying upon business connections with the Houston and Texas Central Railway Company, and that it was operated and managed in connection with the last-named company; but as to whether it has no round-house, or repair shops this defendant is not informed. It also admits that the Houston and Texas Central Railway Company has been placed in the hands of receivers, as in the original bill of complaint alleged, and it admits that it is to the vital interest of the said railway companies that some proper interdependence between them should be maintained; but it denies that it is of vital importance to both said roads that the management of the two should be under one common head, or that the receivers of the two companies should be the same.

116 VII. This defendant, further answering, denies, on information and belief, that it is a matter of vital interest to the lien creditors of the defendant railway company and to all others in interest in said property that the same should not be dismembered; and, while it admits that it is proper and of interest to both said roads that just and proper traffic arrangements should exist between them, still, as to whether the traffic arrangements heretofore existing between the said two companies are just and proper and should be carried out while keeping the accounts of the two companies separate, this defendant is not informed; and this defendant further says that the railroads of the defendant railway company consist of two portions or divisions, one extending from Ross station, in McLennan county, to a point at or near Albany, in the county of Shackelford, about one hundred and seventy-two miles, and the other extending from Garrett, in the county of Ellis, to a point at or near Roberts, in the county of Hunt, about fifty-two miles; that said two divisions, both of which are the property of the defendant railway company, are not connected with each other, except by means of the line of road of the Houston and Texas Central Railway Company, and are not in any way important to each other, nor is there anything in said two divisions of railroad taken together to form one entire line of railroad or to authorize them to be sold as an entirety as constituting one railroad. On the other hand, the said two divisions constitute in fact two separate and distinct railroads, and should be administered as such, and no sale of the property of the defendant railway company should be ordered by the court, unless it shall provide

that each of the said divisions shall be sold separately and distinctly from the other.

VIII. Further answering the said original bill and the said amended and supplemental bill, and especially the allega-
117 tions to the effect that the Houston and Texas Central Railway Company owns over one-third of the capital stock of the Texas Central Railway Company, and that the said Houston and Texas Central Railway Company is also obligated for an indebtedness of $761,992.04, pledged by it to the complainant, this defendant makes the following allegations on information and belief, namely:

About the year 1877 the said Houston and Texas Central Railway Company was in great financial embarrassment, and its pecuniary affairs were in such a condition that it was in great danger of being placed in the hands of a receiver and of being wound up as an independent corporation. Its stock therefore became of very little value, and thereupon one Charles Morgan purchased a majority of the shares of said stock, paying therefor from twelve to fifteen per cent. of their face value. Charles Morgan at that time owned a steamship line, consisting of a large number of steamships running to and from Texas and New Orleans, and he also owned a railroad, known as the Morgan railroad, in Louisiana, running in the direction of Texas, and was the owner of other transportation lines. His object in purchasing the majority of the shares of stock of the Houston and Texas Central Railway Company was to obtain the control of that company and of the transportation and business thereof for the purposes of speculation and to enable him to operate the road in connection with and for the promotion of his other transportation interests. Such control of the Houston and Texas Central Railway Company and of its direction, policy, and government said Morgan acquired by the purchase of said stock, and he thus became able to nominate and elect and in fact did nominate and elect the board of directors of the said railway company, and to dictate and in fact did dictate its entire policy and management.

In the year 1878 the Legislature of the State of Louisiana,
118 at the request and by the procurement of Charles Morgan, passed an act to incorporate Morgan's Louisiana and Texas Railway and Steamship Company, being the complainant in this cause, and under and in pursuance of that act various railway and steamship transportation interests belonging to Morgan became and were consolidated into one corporation, the complainant herein. Morgan owned and continued to own the entire stock and bonds of the corporation so created, except such shares of stock as were necessarily held by the directors of the company in order to qualify them to act as such. Together with the other property which he transferred to the complainant after its incorporation, Morgan transferred to it and vested in it thirty-nine thousand eight hundred shares of the capital stock of the Houston and Texas Central Railway Company, being the stock previously purchased by him as aforesaid and being a full and clear majority of all the shares of the railway company. Prior to such transfer the absolute control and management of all the affairs of the Houston and Texas Central Railway Com-

pany, through the election of its board of directors and dictation of its affairs and policy, were vested in Morgan, as above stated, and after he made such transfer, which was done very soon after the incorporation of the complainant, such control and management were vested by such transfer in the complainant corporation, which was itself owned and fully controlled by Morgan, as aforesaid.

Subsequently and after the complainant had become by such transfer the owner of said stock the defendant, The Texas Central Railway Company, was incorporated. Its incorporation was brought about by the complainant herein and by the Houston and Texas Central Railway Company, both controlled, as aforesaid, by the same interests and operated in connection with each other for the same objects and ends. The incorporation was effected in order to build roads, which were in fact to be branches or divisions of the
119 Houston and Texas Central railway. The chief if not the only reason why these branches were not built by the Houston and Texas Central Railway Company, but were built through a separate incorporation, was because it was feared that certain rights, privileges, and franchises of the older company would be prejudiced or imperiled in case its charter should be so amended as to authorize it to build and hold the same in its own name.

The defendant railway company was organized and incorporated by said two corporations, the complainant and the Houston and Texas Central Railway Company, and by their officials and at their procurement. A few shares of stock were placed in the names of individuals to qualify them to act as directors in the interests of the complainant and the Houston and Texas Central Railway Company and of Charles Morgan through them; but with these small exceptions the complainant acquired in pursuance of subscription two-thirds of the capital stock of the defendant railway company, and the Houston and Texas Central Railway Company acquired in like manner the remaining one-third of the same.

Two or three years or thereabouts after the incorporation of the complainant, as aforesaid, but at exactly what time or times this defendant cannot more particularly specify, certain persons, including Collis P. Huntington, Leland Stanford, Charles Crocker, Mark Hopkins, and others, who were largely interested in and in fact the chief owners of the railway lines running from San Francisco, California, to the Mississippi river, commonly known as the Southern Pacific system or sometimes as the "Huntington system," and which connected with the line of the Houston and Texas Central Railway Company, became the purchasers and owners of the capital stock of The Morgan's Louisiana and Texas Railroad and Steamship Company, the complainant herein. This ownership of these parties was through the medium of a corporation organized under the
120 laws of California under the name of the Southern Development Company, which company is owned and controlled by the persons above alluded to, or the representatives of those who are now living and their associates, and which company is the equitable owner of the stock of the complainant and is itself complainant in the suit No 185 in equity, now pending in the United States circuit court fo

the eastern district of Texas, which suit is referred to in the complainant's bill herein. The complainant in the suit No. 185 and the complainant in this suit represent practically and substantially the same interests, the two complainant corporations being in fact controlled and owned by the same persons.

XXI. As to the interdependence between the defendant railway company and the Houston and Texas Central Railway Company, this defendant says that there has been on the part of the defendant, The Texas Central Railway Company, thoughout its entire existence, in every possible way, an utter and entire dependence upon and subserviency to the complainant in this suit and the interests represented by this complainant; and this defendant is advised and therefore alleges that all the proceedings, acts, and doings of the defendant, The Texas Central Railway Company, from its organization are in fact and in law those of the complainant herein, and are to be equitably imputed to the said complainant.

XXII. This defendant further says that inasmuch as the original and amended and supplemental bills of complaint herein fail to show how much of the whole total alleged indebtedness ($761,992.04) of the Texas Central Railway Company had been advanced by the Houston and Texas Central Railway Company to the defendant railway company prior to November, 1884, and how much thereof
121 was advanced on or about that date, when the company making such advances was insolvent and on the verge of a receivership and under the absolute control of the complainant or parties identical in interest with the complainant; and inasmuch as said bills fail to show any particulars and items of said indebtedness whatever except the execution on the first day of November, 1884, of the sixteen notes payable on demand; and inasmuch as this is a suit to enforce a pretended equitable lien for the amount of such indebtedness as against the mortgage debt of the company, it is advised that good ground of demurrer to the said bills and to each of them exists, and advantage thereof is hereby claimed.

XXIII. This defendant, further answering, says that the Houston and Texas Central Railway Company and the complainant corporation are and each of them is chartered for the sole purpose of building and operating railways and transportation lines between the termini specified in their respective charters, and that neither of said corporations had or has any lawful power or authority to become a subscriber to the capital stock of the defendant railway company or to make loans of money or advances to it, and that all such acts of the said corporations or either of them were *ultra vires* and unlawful and cannot be made the foundation of a valid and equitable claim to a priority over the lien of the deeds of trust made to this defendant, as trustee, either as to the *corpus* of the estate or as to the earnings of the defendant railway company or as to this defendant's right to have the said earnings applied to its benefit as such trustee.

XXIV. This defendant, further answering, says that it is advised and believes and therefore alleges that the complainant can-
22 not maintain this suit because it is the holder of collateral se-

curity for all indebtedness on the part of the Houston and Texas Central Railway Company to this complainant; and this defendant alleges on information and belief that the indebtedness of the defendant railway company to the complainant was created from time to time and at different times, and that the complainant received on each occasion of the creation of such indebtedness or any part thereof collateral security for the payment of the same in the shape of mortgage bonds of the defendant railway company and stocks and other property; and this defendant is advised that by receiving such collateral security, and especially by receiving as such collateral security bonds secured by the said mortgages made to this defendant or one of them, the complainant waived all claim, if any existed, for enforcing any lien paramount and superior to the lien of said mortgages or either of them.

XXV. This defendant is advised and therefore alleges that the complainant has not, in its said original bill of complaint or in its said amended and supplemental bill of complaint, made or stated such a case as entitles it in a court of equity to any discovery or relief against the defendants, and that the bills present no lien or cause or ground of equitable cognizance or any ground for the appointment of a receiver of the defendant railway company. However, this defendant answers the said bills, praying, nevertheless, that it may have the same benefit and advantage as if it had specially demurred to the same; and this defendant specially alleges and submits to the court that receiver's certificates issued prior to the time when this defendant was made or became a party to this cause are not and cannot be a lien on the earnings of said railway company or on the *corpus* of the property thereof prior and superior to the lien of the mortgages made to this defendant,
123 and that no priority of payment thereof can be given by any order or final decree in this cause.

XXVI. This defendant, further answering, denies each and every other allegation in the said bills of complaint not hereinbefore admitted, controverted, or denied, and without this, that any other matter or thing in the said bills of complaint or either of them contained material or necessary to make answer unto and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowledge or belief of this defendant; all of which this defendant is willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

[L. S.] Attest: WM. H. LEUPP, *Secretary.*

TURNER, LEE & McCLURE,
20 Nassau street, New York,
BALLINGER, MOTT & TERRY,
Galveston, Texas,
Solicitors and of Counsel for Complainants.

124 SOUTHERN DISTRICT OF NEW YORK, } ss:
State, City, and County of New York, }

I, Rosewell G. Rolston, being duly sworn, depose and say that I am the president of The Farmers' Loan and Trust Company, the defendant above named, and have been such president for a number of years past; that I have read the foregoing answer and know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

I further say that the reason this verification is not made by the said defendant is that it is a corporation; that I am an officer of the same—namely, the president—and that my knowledge is derived from having taken part in the transactions spoken of and otherwise, and my grounds of belief are information communicated to me by the agents of said corporation and others. I further say that the seal affixed to said answer is the corporate seal of said defendant and was by me affixed to said answer by authority of said corporation.

R. G. ROLSTON.

Sworn to before me this 15th day of Sept., 1885.

JOHN McCLURE,
Notary Public.

125 *Replication to Answer of Farmers' Loan & Trust Company. Filed Nov.* 2, 1885.

In Equity. United States Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY *versus* THE TEXAS CENTRAL RAILWAY COMPANY *et als.* } No. 21.

Before the honorable the judges of the United States circuit court for the fifth judicial circuit, eastern district of Louisiana.

The replication of Morgan's Louisiana & Texas Railroad and Steamship Company, complainant, to the answer of The Farmers' Loan & Trust Company, defendant.

This repliant, saving and reserving to *him*self now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that *he* will
126 aver, maintain, and prove *his* bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and

hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* has already prayed.

FARRAR & KRUTTSCHNITT,
Counsel and Solicitors for Complainant.

127 *Replication to Answer of Metropolitan Trust Co. of the City of New York. Filed Nov.* 2, 1885.

United States Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY
versus
THE TEXAS CENTRAL RAILWAY COMPANY *et als.*
In Equity. No. 21.

Before the honorable judges of the United States circuit court for the fifth judicial circuit, eastern district of Louisiana.

The replication of Morgan's Louisiana & Texas Railroad and Steamship Company, complainant, to the answer of The Metropolitan Trust Company of the City of New York, defendant.

This repliant, saving and reserving to *him*self now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies
128 of the said answer, for replication thereunto says that *he* will aver, maintain, and prove *his* bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* has already prayed.

FARRAR & KRUTTSCHNITT,
Counsel and Solicitors for Complainant.

129 *Stipulation as to Extension of Time for Taking Testimony. Filed Febr'y 1st,* 1886.

United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
TEXAS CENTRAL RAILROAD COMPANY *et als.*
No. 21. In Equity.

It is hereby agreed between the solicitors for the complainant and

the defendants that the time for taking testimony in this cause is hereby extended from the rule day in February until the rule day in April, 1886.

TURNER, LEE & McCLURE,
Solicitors for Def't, The Farmers' Loan & Trust Company.
FARRAR & KRUTTSCHNITT,
Sol'r's Complainant.
BAKER, BOTTS & BAKER,
Sol'rs for T. C. R'y Co.
L. C. ALEXANDER,
Sol'r for Metropolitan Trust Co. of New York.

130 *Extension of Time for Taking Testimony. Filed April* 26, 1866.

United States Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY *et al.*

It is hereby stipulated that the time to take testimony in the above-entitled suit be extended three months from April 5th, 1886.

TURNER, LEE & McCLURE,
For F., L. & T. Co.
BAKER, BOTTS & BAKER,
For Def't R'w'y Co.
L. C. ALEXANDER,
Att'y for Met. Trust Co., &c.
BALLINGER, MOTT & TERRY,
For —— ——.
FARRAR & KRUTTSCHNITT,
Solicitors for Complainant.

131 *Application of Farmers' Loan & Trust Co. to File Cross-Bill. Filed July* 3, 1886.

THE UNITED STATES OF AMERICA,
Northern District of Texas.

To the honorable the judges of the circuit court of the United States for the northern district of Texas:

The Farmers' Loan & Trust Company, a corporation under the laws of the State of New York and a citizen of said State, respectfully represents that Morgan's Louisiana & Texas Steamship & Railway Company brought its bill in the circuit court of the United States for the northern district of Texas, at Waco, against the Texas Central Railway Company, and in which suit your petitioner and the Metropolitan Trust Company of New York are also defendants. Said suit is number 21 on the equity docket of said court.

All the defendants have made answer in said suit, but no evidence has been taken therein.

The said complainant alleges your petitioner and the said
132 Metropolitan Trust Company to be trustees in certain mortgages executed by the said Texas Central Railway Company, which fact is true, and the said complainant sues on certain notes alleged to have been executed by said railway company, claimed to have a prior lien on all the said railway and its property to the liens of said mortgages.

That your petitioner has in its answer denied the existence of said prior lien, and, default having been made on the said mortgages securities, your petitioner now prays leave of the court to file its cross-bill for the enforcement and foreclosure of said mortgage securities, making as defendants therein the complainant and its co-defendant

That notice has been given to the said Texas Central Railway Company of this application, and its acknowledgment thereof is presented herewith.

Notice was forwarded by mail to the solicitors of the complainant, Messrs. Farrar & Kruttschnitt, on the 19th day of June, 1886,
133 but acknowledgment thereof has not yet been received.

Petitioner asks proper order for leave to file said cross-bill, which is presented herewith.

TURNER, LEE & McCLURE,
BALLINGER, MOTT & TERRY,
Solicitors and Counsel for Farmers' Loan & Trust Company.

Waiver of notice of application of The Farmers' Loan & Trust Co. to file cross-bill by Texas Central Railway Company, attached to foregoing application.

In the Circuit Court of the United States, Northern District of Texas, at Waco.

Between—

MORGAN'S LOUISIANA & TEXAS STEAMSHIP & RAILWAY CO., Complainant,
and
THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN & TRUST CO., *et al.*, Defendants.
} Equity, No. 21.

In the above cause notice on behalf of the Farmers' Loan
134 & Trust Company of its application to file a cross-bill against the complainant in the above-entitled suit and against its co-defendants therein is hereby waived. A copy of said cross-bill has been received, and The Texas Central Railway Company, as defendant to said cross-bill, will enter appearance thereto on the rule day in August, 1886—

Reserving all legal objections to said application and to said cross-bill.

24 June, 1886.

BAKER, BOTTS & BAKER,
Sol's for H. & T. C. R'w'y Co.

135 Circuit Court of the United States, Northern District of Texas.

THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, Complainant,
against
THE TEXAS CENTRAL RAILWAY COMPANY and Others.
} No. 33, Equity.

Orig. Cross-Bill of Complaint.

Turner, Lee & McClure, 20 Nassau street, New York; Ballinger, Mott & Terry, Galveston, Texas, complainant's solicitors.
Filed July 3d, 1886.

J. H. FINKS. *Clerk.*

New York:
Martin B. Brown, law printer and stationer,
Nos. 49 and 51 Park Place.
1886.

Leave is granted to file this bill.
Graham, July 1st, 1886.
(Signed) A. P. McCORMICK, *Judge.*

136 In the Circuit Court of the United States for the Northern District of Texas.

To the judges of the circuit court of the United States for the northern district of Texas, sitting in equity:

The Farmers' Loan and Trust Company, a corporation duly created by and under the laws of the State of New York, a citizen of said State, having its principal office and place of abode in the city of New York, brings this its bill of complaint against the Texas Central Railway Company, a corporation duly created by and under the laws of the State of Texas, a citizen of said State, having its principal office and place of abode in the city of Houston, in the county of Harris and State of Texas, and against the Metropolitan Trust Company of the City of New York, a corporation duly created by and under the laws of the State of New York, a citizen of said State, having its principal office and place of abode in the city of New York, and against Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation duly created by and under the laws of the State of Louisiana, a citizen of said State, having its principal office and place of abode in the city of New Orleans, the said Morgan's Louisiana and Texas Railroad and Steamship Company being complainant and the other parties above named being defendants, in a certain cause now pending in said circuit court of the United States for the northern district of Texas, commenced by filing a bill of complaint on the 4th day of April, 1885, and
137 this present bill of complaint being filed as a cross-bill in said cause, leave to file the same having first been had and obtained.

And thereupon your orator complains and alleges:

I. Your orator is a corporation duly organized and existing under the laws of the State of New York, and as such corporation is fully authorized and empowered to receive and hold in trust the lands, railroads, franchises, and other property conveyed to it in trust, as hereinafter fully stated, and to execute the trusts reposed in it under and by virtue of the mortgages or deeds of trust hereinafter set forth. The defendants, The Metropolitan Trust Company of the City of New York and Morgan's Louisiana and Texas Railroad and Steamship Company are corporations duly organized and existing under the laws of the States of New and Louisiana, respectively.

II. The defendant, The Texas Central Railway Company, is a corporation duly organized and existing under the laws of the State of Texas. The Texas Central Railway Company was originally incorporated to construct and operate a line of railway in the State of Texas, which was to extend from Ross station, in McLennan county, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a distance of about 130 miles or more. On or about May 12th, 1881, said railway company, in pursuance of the laws of Texas, amended its charter so as to authorize it to extend and construct its railway from its then terminus, near the centre of Eastland county, through the counties of Eastland, Callahan, Stephens, Shackelford, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of Texas, a distance of about 375 miles; also to construct a branch railway from the company's main line at Whitney, in Hill county, through the coun-
138 ties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River in Bowie county east of the eastern boundary line of Indian Territory, a distance of about 235 miles or more; also to construct a branch railway from a point in Hopkins county on the line of the proposed railway from Whitney to the point on Red River in Bowie county through the counties of Hopkins, Delta, and Lamar to a point on Red River in Lamar county near the mouth of Boggy river, a distance of about 65 miles or more.

III. Under and in pursuance of its corporate powers the Texas Central Railway Company has built and is now the owner of the following-described railways, amounting in the aggregate to about 227 miles of railway, namely:

1. A line of railway from Ross station, in McLennan county, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, and Stephens to Albany, at or near the centre of Shackelford county, a distance of about 176 miles; and also—

2. A line of railway from Garrett, in the county of Ellis, through the counties of Ellis, Kaufman, and Hunt to Roberts, in the southern part of the county of Hunt, a distance of about fifty-two miles.

IV. The defendant railway company had at the times when they were respectively made, as hereinafter stated, full power and authority to make the mortgages or deeds of trust hereinafter mentioned and each and all of them.

V. On or about the 15th day of September, 1879, and before the amendment of said charter, as aforesaid, the said defendant, The Texas Central Railway Company, executed and delivered to your orator its certain mortgage or deed of trust, dated that day, wherein and whereby it declared that, to meet the expense of constructing, building, and putting into operation a railway in the State
139 of Texas to extend from Ross station, in McLennan county, as aforesaid, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comache to or near the centre of Eastland county, a distance of about 130 miles, it had resolved to issue and negotiate a series of bonds of $1,000 each at the rate of $15,000 to each mile of road, all bearing date said 15th day of September, 1879, and made payable to your orator or bearer thirty years after November 1st, 1879, for value received, at the agency of said railway company in the city of New York, with interest from date at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the then present weight and fineness as fixed by the laws of the United States in force at the date of issue, and which bonds were also exempted from any income tax then or thereafter to be levied or provided for by any law of the United States, the said bonds and the interest to become due thereon being equally secured although issued at different times and authenticated by a certificate to be signed by your orator; — did, in order to secure said bonds so to be issued by said company, defendant railway company, and the interest to become due thereon, bargain, sell, convey, transfer, and confirm unto your orator, its successors and assigns in trust, all and singular the main line of the said Texas Central Railway Company's railway, built and to be built, beginning at Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of Eastland county, a distance of about 130 miles, together with all side tracks, turn-outs, rolling stock, equipments, and materials, all rights of way, and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, including and meaning to include all the property, real and personal, then acquired or which thereafter might be acquired by the said company in the State of Texas used for and pertaining to the operation of the said railway. The said conveyance was made in trust on cer-
140 tain terms and conditions as therein at length set forth for the benefit of the owners and holders of the said bonds and of the interest coupons thereto annexed.

VI. In the said mortgage or deed of trust it was, also among other things, provided that in case the Texas Central Railway Company should fail to pay the principal or any part thereof or any of the interest on any of the said bonds at any time when due, and such de-

fault should continue sixty days after demand, then and thereupon the principal of all the said bonds should be and become immediately due and payable; and the said mortgage or deed of trust contained other provisions, as by reference thereto will more fully and at length appear.

VII. The said mortgage or deed of trust was recorded in all respects according to law in the office of the clerk of the county of McLennan on the 7th day of October, 1879, in the records of said county, in Book I of Mortgages, at page 382, and was also registered in all respects according to law so as to affect the chattels and other personal property of the said railway company in said county, and the original or a certified copy of said mortgage remains on deposit in said county. The same is true respecting said mortgage as to a number of other counties in the State of Texas where property affected thereby was and is situated, in each of which the same is duly recorded and also registered as a chattel mortgage, and in each of which a duplicate original or a certified copy thereof remains on deposit. A copy of the said mortgage or deed of trust is hereto annexed, marked Schedule A, and to the same your orator prays to refer as forming in all respects a part of this its bill of complaint.

VI. The bonds to secure which said mortgage was made were all dated September 15th, 1879, and were made for the sum of one thousand dollars each, payable November 1st, 1909, with interest at the rate of seven per centum per annum, to be paid semi-annually on the first days of May and November in each year, on presentation and surrender of the proper annexed coupons, in gold
141 coin of the then present weight and fineness, and they were each identified by a certificate thereon, made by your orator, to the effect that the bond so certified was one of the series described in and secured by the said mortgage or deed of trust. In accordance with the provisions of said mortgage or deed of trust your orator certified 2,145 of said bonds, aggregating $2,145,000 of principal. A large number of the bonds so certified are now outstanding and valid obligations of the defendant, The Texas Central Railway Company, and entitled to the security of the said mortgage or deed of trust, but as to whether all, and if not all how many, are so outstanding and so entitled your orator has no positive knowledge.

VIII. After the making of the mortgage or deed of trust above described the charter was amended as aforesaid, and thereupon, on or about May 16th, 1881, the said Texas Central Railway Company executed and delivered to your orator its certain other mortgage or deed of trust, dated that day, wherein and whereby it declared that for the purpose of meeting the expense of constructing, completing and putting into operation the extension of its said railway and the branch line authorized to be constructed by the amendment to its charter and for the purpose of exchanging and retiring the series of bonds hereinabove described to the amount of $2,145,000, secured by the first above-mentioned mortgage or deed of trust on the railway from Ross, in McLennan county, to the town of Cisco, in Eastland county, a distance of 143 miles, said railway company had resolved to issue and negotiate a series of bonds of one thousan

dollars each at the rate of fifteen thousand dollars to each mile of road, all bearing date May 16th, 1881, and made payable to your orator or bearer on the first day of May, 1911, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year on the presentation and surrender of the proper annexed coupons, and that in order to secure the prompt payment of the principal and interest of said bonds the said railway company did by the said mortgage or deed of trust grant,
142 bargain, sell, convey, transfer, and confirm unto your orator, its successor, successors, and assigns in said trust forever, all and singular the main line of said Texas Central Railway Company's railway, then built and to be built, beginning at the town of Bass, in McLennan county, — extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackelford, Stephens, Throckmorton, Haskell, Knox, Bayler, Kings, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas between the 101st and 102d meridian of west longitude, a distance of about three hundred and seventy-five miles; and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; and also all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county on said company's branch line of railway from Whitney to Red River in Bowie county, thence through the counties of Hopkins, Delta, and Lamar to a point on the Red River in Lamar county near the mouth of Boggy river, a distance of about sixty-five miles, together with all side tracks, turn-outs, rolling stock, equipments, and materials, all rights of way and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, including and meaning to include all the property, real and personal, then acquired or which might thereafter be acquired by the said company in the State of Texas used for and pertaining to the operation of the said railway as therein described: Provided, that nothing therein contained should create any lien upon the lines of railway that the Texas Central Railway Company
143 might thereafter acquire or construct not included in the said extended line or branches thereof in said mortgage or deed of trust described, nor upon the equipments, appointments, appurtenances, revenues, property, real or personal, rights, and franchises of said railway thereafter to be constructed as afore-said.

IX. Provision was made in said mortgage or deed of trust for the retirement and extinguishing of the said series of bonds of $2,145,000, secured by the mortgage previously made to your orator, the same to be exchanged for an equal amount of bonds

to be issued under said last-mentioned mortgage or deed of trust of May 16th, 1881.

X. In the said last-mentioned mortgage or deed of trust it was also, among other things, provided that if the said defendant railway company should fail to pay any of the interest on any of said bonds at any time when the same might become due and payable according to the tenor thereof, and if the said default should continue sixty days after having been demanded, then and thereupon the principal of all the said bonds thereby secured should be and become immediately due and payable, and the said mortgage or deed of trust contained other provisions, as by reference thereunto will more fully and at length appear.

XI. The said mortgage or deed of trust was recorded in all respects according to law in the office of the clerk of the county of McLennan on the 28th day of July, 1881, in the records of said county in Book J of mortgages, at page 592, and was also registered in all respects according to law so as to affect the chattels and other personal property of the said railway company in Book M of Chattel mortgages of said county, at page 123, and the original or a certified copy of the same remains on deposit in said county. The same is true respecting said mortgage or deed of trust as to the other counties in the State of Texas where property affected thereby was and is situated, in each of which the same is duly recorded and also registered as a chattel mortgage — in each of which a du-
144 plicate original or a certified copy thereof remains on deposit. A copy of the said mortgage or deed of trust is hereto annexed, marked Schedule B, and to the same your orator prays to refer as forming in all respects a part of this its bill of complaint.

XII. The bonds to secure which the said last-recited mortgage was made were all dated May 16th, 1881, and were made for the sum of one thousand dollars each, payable May 1, 1911, with interest at the rate of seven per centum per annum, to be paid semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, in gold coin of the then present weight and fineness, and they were each identified by a certificate thereon made by your orator to the effect that the bond so certified was one of the series described in and secured by the said mortgage or deed of trust. In accordance with the provisions of the said mortgage or deed of trust your orator certified 1,254 of said bonds, aggregating $1,254,000 of principal. A large number of the bonds so certified are now outstanding and valid obligations of the defendant, The Texas Central Railway Company, and entitled to the security of the said mortgage or deed of trust, but as to whether all, and if not all how many, are so entitled your orator has no positive knowledge.

XIII. Your orator is informed and believes, and therefore alleges, that during the month of October, 1884, the said defendant railway company made and delivered a certain other deed of trust to the defendant, The Metropolitan Trust Company of the City of New York, to secure a series of bonds to be issued and to be known as general mortgage bonds of said company, and that the said railway

company did by said mortgage or deed of trust grant, bargain, sell, convey, transfer, and confirm unto said defendant trust company all its property of every sort and description. Your orator has no positive knowledge respecting the form of the said mortgage or deed of trust, nor as to whether any bonds have legally been
145 issued and are outstanding secured by the lien of the said last-mentioned mortgage or deed of trust, but it alleges and insists that if any such bonds are outstanding the lien of the said mortgage securing the same is in all respects subsequent and subsidiary to the lien of the mortgages or deeds of trust hereinabove recited as made to your orator as aforesaid, and that any interest which the said Metropolitan Trust Company of the City of New York or the said bondholders may have in the said mortgaged premises or any part thereof is in all respects subsequent and subsidiary to the interest of your orator, as trustee, in the same.

XIV. The defendant railway company has made default in the covenants and agreements in the said first above-mentioned mortgage or deed of trust contained by failing to pay the interest on all the bonds secured thereby which became due and payable on the first day of May, 1885, and all interest since that date according to the tenor thereof. Payment of such interest, as your orator is informed and believes, has been duly demanded, and said default has continued sixty days after such demand. Thereupon the principal of all the said bonds secured by said last-mentioned mortgage or deed of trust is and has become immediately due and payable, but the same and all said interest so in arrears as aforesaid remains still due and unpaid.

XV. The defendant railroad company has also made default in the covenants and agreements in the said last above-mentioned mortgage or deed of trust contained by failing to pay the interest on all the bonds secured thereby which became due and payable on the first day of May, 1885, and all interest since that date according to the tenor thereof. Payment of such interest, as your orator is informed and believes, has been duly demanded, and said default has continued sixty days after such demand. Thereupon the principal of all the said bonds secured by said last-mentioned mortgage or deed of trust is and has become immediately due and payable, but the same and all said interest so in arrears as aforesaid remains still due and unpaid.

146 XVI. On or about the 4th day of April, 1885, Morgan's Louisiana and Texas Railroad and Steamship Company, a Louisiana corporation, instituted suit in this court against the said Texas Central Railway Company and filed therein its bill, which is designated as No. 21 on the equity docket of this court, wherein the said complainant set forth the said mortgages or deeds of trust and alleged that the said railway company was indebted to the said complainant in large sums of money for money loaned at various times, which money, if loaned at all, your orator alleges, was loaned with full knowledge of the existence of the said mortgages and deeds of trust and of the rights of your orator under the same and the indebtedness secured thereby. The said complainant, by its

said bill of complaint, sought to enforce payment of its said claim, alleging and setting forth that the railway company was wholly insolvent and that its various creditors were pressing for payment; that its property was in danger of being scattered, wasted, and lost to its creditors; and it made sundry other allegations, as by reference to said bill, on the files of this court, will more fully appear; and thereupon in and by said bill it prayed that this court would take possession of the property of the said railway company by the appointment of receivers of the same. Thereupon this court, not adjudging or determining that the claim of the said complainant was well founded or that its bill was well brought or was well founded in equity, but induced by the representations and pretensions of the said complainant to the effect, among other things, that the said property was in danger and in great need of the protection of the court, took the same into its possession by the appointment of receivers thereof by its order made in said action on the 6th day of April, 1885.

XVII. Notwithstanding the fact that it was well known to the defendant, The Texas Central Railway Company, and also to the said complainant in said cause and to the parties interested in obtaining a receiver of the property of the said railway company that the mortgages or deeds of trust above recited had been made, and that your
147 orator was grantee in trust in both said mortgages or deeds of trust, nevertheless none of said companies or parties notified your orator of the intention to file said bill or to apply for the appointment of any such receiver or receivers; but such appointment was made with the consent of the defendant, The Texas Central Railway Company, through its solicitors, in the absence of your orator and before your orator had been made party to the cause and without your orator having any opportunity to present to the court its claim for the right to take possession of the said railroad or any part, portion, or division thereof, or to make any opposition to the appointment of such receivers or any suggestion to the court as to who was a proper person to be appointed such receiver. Your orator is advised and therefore alleges that the said bill of complaint of Morgan's Louisiana and Texas Railroad and Steamship Company, so filed as aforesaid, alleges and sets forth no claim which is any valid lien whatever on said premises, or which, if the same should be held to be a lien at all, is not subject and inferior to the liens of the said mortgages or deeds of trust so made to your orator, as aforesaid, and the said bill does not set up or show any equity entitling the said complainant therein to the appointment of receivers of said property or the retention of the same by the court, as your orator is advised.

XVIII. Charles Dillingham and Benjamin G. Clarke have been and were appointed joint receivers of the property and effects of the defendant railway company by order of the Honorable Don A. Pardee, judge of this court, sitting at chambers, on the hearing of a motion made in said cause, wherein Morgan's Louisiana and Texas Railroad and Steamship Company is complainant and the said Texas Central Railway Company is defendant, as aforesaid, your

orator not then being a party to said cause, as aforesaid. The persons so named as receivers immediately on their appointment qualified as such and took possession of all the property of the defendant,
The Texas Central Railway Company, and entered upon the
148 discharge of their duties as receivers, and they have ever since continued to act as such. All the property of the Texas Central Railway Company is in the hands of this honorable court through its said receivers, who are and ever since the 6th day of April, 1885, have been operating the railways owned by said railway company and have been and are taking and using the income thereof.

XIX. Your orator was after the appointment of said receivers made party defendant in said cause, and has appeared therein, and has answered the said bill, and has taken objection in its said answer to the said bill for want of equity, and has claimed priority over the complainant therein for all matters and things set forth in the said bill of complaint, as by reference to said answer, on the files of this court, will more fully appear.

XX. The defendant, The Texas Central Railway Company, is insolvent and utterly unable to pay its debts and liabilities. Its indebtedness, bonded and otherwise, is so large that the railway company and its receivers are now utterly unable to pay the floating debt and discharge the interest on mortgage bonds from time to time out of net earnings, and this state of affairs is likely to continue for an indefinite period of time, the company having no power or means of meeting its obligations and no moneys or properties with which to pay the same.

In consequence of the embarrassed condition of the financial affairs of the defendant, The Texas Central Railway Company, and on account of the many difficulties which are manifest upon and from the allegations hereinbefore contained involved in the execution of your orator's said trusts it is impossible for your orator, as trustee under the said mortgages or deeds of trust, to execute its said trusts in the way and manner specified and provided in and by the said mortgages or deeds of trust without the aid or interposition of this honorable court in chancery sitting, nor can the said trusts be executed, as your orator is advised and charges, and the rights of all the parties interested be ascertained and fully protected in the premises otherwise than by a judicial sale of the mortgaged prem-
149 ises and property covered by the said mortgage or deed of trust. Until such sale can be had and the proceeds thereof be distributed your orator is likewise advised and charges that it is expedient and necessary that the franchises, property, premises, and appurtenances so mortgaged to your orator in trust as aforesaid, and all the rights, franchises, and property of the said defendant, The Texas Central Railway Company, of whatever name, nature, and description, including all its moneys on hand and the earnings of the same, continue to remain and be placed in the hands and under the control of a receiver or receivers, with such proper powers and control over the same as to the court shall seem right and equitable to be conferred.

In consideration whereof, and forasmuch as your orator is remediless in the premises by the rules of the common law and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they may separately and severally true, direct, and perfect answer make (but not under oath, their answer under oath being hereby expressly waived), according to the best of their knowledge, information, and belief, to all and singular the matters and charges aforesaid, and that as fully in every respect as if the same were here again repeated and they thereunto particulary interrogated; that your orator be placed in possession of the mortgaged premises personally, or that a receiver may be appointed in this cause of all and singular the rights, franchises, and property of every name and nature of the defendant, The Texas Central Railway Company, with power and authority to operate said railroad or railroads and to carry on all the business of the said railway company under the protection of this court, with all the usual powers and duties of receivers and managers of railroads; that an injunction may issue out of this court restraining and enjoining the Texas Central Railway Company and all and every its agents and servants from in any way interfering with the possession or control of said railroad under the control
150 of said receiver, and from selling, transferring, conveying, leasing, or otherwise disposing of or incumbering any of the property, rights, or franchises of the Texas Central Railway Company; that an account be taken of the amount due, owing, and payable by the said defendant, The Texas Central Railway Company, to the lawful holders of the bonds and coupons secured by the said mortgages or deeds of trust and each of them respectively so made to your orator as aforesaid, including the principal of each and all of the said outstanding bonds; that the amounts so found due on the bonds secured by the first-made mortgage or deed of trust may be adjudged to be a first lien on all the property and premises covered thereby; that the amounts found due on the bonds secured by the second-made mortgage or deed of trust may be adjudged to be a lien on all the property of the defendant railway company, subject only to the prior lien of the first-made mortgage as to the property covered thereby, and that this court will order, adjudge, and decree that the defendant, The Texas Central Railway Company, shall within a limited time pay into court, for the use of the holders of such unpaid bonds and coupons, the amounts of principal and interest so found to be due and payable thereon, with interest on the same, together with the costs, expenses, and charges of this suit, and a reasonable and proper compensation to your orator in the performance of its trust; and should default be made in such payment, then that all the property and franchises of the said defendant, The Texas Central Railway Company, including the entire franchises, property, premises, and appurtenances belonging to it, described in and affected by the said mortgages or deeds of trust should be sold to pay the said principal and interest, with th

costs and expenses as aforesaid, and the proceeds of sale be applied, in the first instance, to the payment of all legal costs and expenses incurred by your orator in the performance and discharge of the duties of its said trust and its own reasonable compensation, and, in the next place, to the payment of the bonds and coupons secured by the said mortgages or deeds of trust so made to your orator, as
151 hereinbefore set forth, and that the surplus, if any there may be, may be applied in such manner and among such parties as may be just; that all the defendants in this suit may be barred of and from any equity of redemption of and in said property and franchises as against both of the said mortgages or deeds of trust, and that any deficiency may be entered in this cause as a judgment against the Texas Central Railway Company, and that your orator may have such other and further relief in the premises as the circumstances of the case may require and as may be agreeable to equity—

May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, directed to the defendants, The Texas Central Railway Company, The Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company, to appear and answer this bill.

And your orator will ever pray, etc.

THE FARMERS' LOAN AND TRUST COMPANY,
By R. G. ROLSTON, *President.*

TURNER, LEE & McCLURE,
20 Nassau Street, New York, and
BALLINGER, MOTT & TERRY,
Galveston, Texas, Solicitors and of Counsel for Complainants.

152 CITY, COUNTY, AND STATE OF NEW YORK, } ss:
Southern District of New York, }

I, Rosewell G. Rolston, being duly sworn, depose and say that I am the president of The Farmers' Loan and Trust Company, the cross-complainant above named, and have been such president for a number of years past; that I have read the foregoing cross-bill of complaint and know the contents thereof, and that the same is true to my own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

I further say that the reason why this verification is not made by the said cross-complainant is that it is a corporation; that I am an officer of the same, to wit, the president, and that my knowledge is derived from having taken my part in the transactions spoken of and otherwise, and my grounds of belief are information communicated to me by the agents of said corporation and others. I further say that the seal affixed to said cross-bill of complaint is the corpo-

rate seal of said cross-complainant and was by me affixed to the same by authority of said corporation.

R. G. ROLSTON.

Sworn to before me this 15th day of June, 1886.

JOHN McCLURE,
Notary Public, New York County.

153 SCHEDULE A.

The Texas Central Railway Co. to the Farmers' Loan and Trust Co. of the City of New York.

This deed, made and entered into this the fifteenth day of September, A. D. 1879, by and between the Texas Central Railway Company, a corporation organized under and by virtue of the laws of the State of Texas, party of the first part, and the Farmers' Loan and Trust Company of the City of New York, a corporation created and existing under the laws of the State of New York, trustee, party of the second part, witnesseth:

Whereas the said Texas Central Railway Company, to meet the expense of constructing, completing, and putting into operation a railway in the State of Texas, which is to extend from Ross station, in McLennan county, through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche, to or near the centre of Eastland county, a distance of about one hundred and thirty miles, has resolved to issue and negotiate, as by law and action of the stockholders they are duly authorized, a series of bonds of one thousand dollars each, at the rate of fifteen thousand dollars to each mile of road, all of which bear date the fifteenth day of September,
154 A. D. 1879, and which are made payable to the Farmers' Loan and Trust Company of the City of New York, or bearer, thirty years after November the first, 1879, for value received, at its agency in the city of New York, with interest from date, at the rate of seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and firmness as fixed by the laws of the United States now in force, and which bonds are also exempt from any income tax that now is or hereafter may be levied or provided for by any law of the United States, which said bonds and the interest to become due thereon are to be all equally secured by these presents, although issued at different times, and to be authenticated by a certificate to be signed by the said trustee that the same are issued in accordaace with this deed of trust or mortgage:

Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it duly paid by the said Farmers' Loan and Trust Company of the City of New York the receipt of which is hereby acknowledged, the said Texas Centra

Railway Company has granted, bargained and sold, conveyed, transferred, and confirmed, and by these presents doth grant, bargain and sell, transfer, and confirm, unto the said Farmers' Loan and Trust Company of the City of New York, its successor and assigns in this trust forever, all and singular the main line of the said Texas Central Railway Company's railway, built and to be built, beginning at the Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche, to or near the centre of Eastland county, a distance of about one hundred and thirty miles, together with all side tracks, turnouts, rolling stock, equipments, and materials, all rights of way and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, including and meaning to include all the property, real and personal, now acquired or which hereafter may be acquired by the said company in the State of Texas
155 used for and pertaining to the operation of the said railway; to have and to hold the said railway, property, premises, and rights hereby conveyed or intended so to be unto the said Farmers' Loan and Trust Company of the City of New York and its successor, successors, or assigns in trust for the owners and holders of said bonds or any of them, subject to the terms and stipulations of said bonds, and the interest coupons thereto annexed, and the provisions of the articles of incorporation of said company, and subject also to the possession, control, and management of the directors of said railway company so long as said company shall well and truly perform all and singular the stipulations of the bond aforesaid and the covenants of this deed; and in the event that the said railway company shall pay or cause to be paid the principal of said bonds and the several installments of interest thereon as the same become due, then this deed and all herein contained shall be void, and the property hereby conveyed shall revert to and revest in the said Texas Central Railway Company, its successors and assigns, without any acknowledgement of satisfaction, reconveyance, or other act; but in case the Texas Central Railway Company shall fail to pay the principal or any part thereof or any of the interest on any of the said bonds at any time when the same may become due and payable according to the tenor thereof, and if the said default shall continue sixty days after having been demanded, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable, and upon the request of the holder or holders of seventy-five per cent. of said bonds then outstanding, and written notice of said request being served on the New York agency of the party of the first part, at which said bonds and coupons are made payable, the said trustee (who may act by its president or attorney) or its successor or successors in this trust may and shall take actual possession (with or without entry or foreclosure) of said railway, and of all and singular the said mortgaged property, and shall manage and operate the same and receive all the income and profits of the same, together with all the books, papers, records, accounts, and money of the said railway company, first defraying

out of the same the expenses of the road and its needful re-
156 pairs and the management of said trust, and the — surplus to pay the interest and principal of all the bonds which may be due and outstanding and hereby secured *pro rata*, and upon the request of the holder or holders of seventy-five per cent. in amount of the bonds so in default which may be at any time outstanding under this deed of trust it shall be the duty of the said Farmers' Loan and Trust Company of the City of New York, by its president or agent duly appointed in its behalf, to foreclose this mortgage or deed of trust and sell the property herein and hereby conveyed, at the city of Houston, Texas, at public auction, to the highest bidder for cash after having given at least sixty days' notice of the time, place, and terms of sale by advertisement in at least two daily newspapers published in the city of Houston and two daily newspapers published in the city of New York, and upon making such sale said Farmers' Loan and Trust Company of the City of New York, its successors or assigns in this trust, shall execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed, and it, the said Farmers' Loan and Trust Company of the City of New York, its successors and assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this trust, including a reasonable commission or compensation to the trustee.

Second. To the payment of the principal of said bonds and the interest thereon to the day of sale, and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds and coupons.

Third. If, after paying all of said bonds and the interest thereon to the day of sale, there shall remain a surplus said trustee shall pay the same to the Texas Central Railway Company, its successors or assigns.

And the said Texas Central Railway Company hereby further agrees to and with the said Farmers' Loan and Trust Com-
157 pany of the City of New York, its successors and assigns in this trust, that it, the said railway company, shall and will create a sinking fund from its earnings for the redemption and purchase of said bonds and each of them by depositing with the said trustee, from and after the first of January, one thousand eight hundred and eighty-five, and annually thereafter, until the maturity of said bonds, on or before the first day of April in each year, a sum annually equal to two per centum of the amount of such bonds as shall then be outstanding and unpaid, which said sum shall be paid in gold coin of the weight and fineness hereinbefore mentioned, and the said moneys shall be invested by the said trustee in the purchase of said bonds at the lowest price at which the same can be conveniently bought, after having advertised for the same in two or more newspapers in the city of New York, provided such purchase can be made at or below the price of one thousand and one hundred dollars per bond; but it is understood that in case sufficient of said bonds to absorb the amount to be paid into said sinking fund can-

not be purchased or are not offered to said trustee at or below the price above mentioned, then said trustee or its successor, successors, or assigns shall within thirty days after the receipt of said money invest the same in United States Government bonds on the most favorable terms practicable; and in determining what bonds shall be purchased or redeemed with the sinking fund aforesaid it shall be the duty of said trustee to accept and pay the bonds offered to it at the lowest price within thirty days after the receipt of each installment of said sinking fund, and in case the bonds of different parties are offered at the same price it shall be the duty of said trustee to accept and pay those first offered within said thirty days; and the bonds and coupons so purchased shall be cancelled, and a certificate of the numbers and amounts of said bonds shall be immediately furnished by said trustee to the treasurer of the said Texas Central Railway Company.

It is further covenanted by the said Texas Central Railway Company that the proceeds of these bonds shall be applied in good faith to the construction, improvement, and equipment of said
158 railway and putting the same into operation. It is, however, expressly agreed that the said railway company may dispose of the current net revenues and income of all the said property and railway hereby conveyed in such manner as it shall deem best until default shall be made in the payment of the interest or principal of said bonds or of any one or more of them, and shall have the right to sell and dispose of any such real estate or other property as it may own or acquire which may not be needed or required for the purposes and business of said railway, and which sale and conveyance of said property shall transfer the said property and title free from the incumbrance of this mortgage or deed of trust, and to change its tracks and make any and all alterations necessary for the benefit of the same.

It is understood and agreed that the bonds secured herein are to be issued as follows, viz: On the execution of these presents seven hundred and fifty bonds may issue, and no more bonds shall be issued until at least fifty miles of railway, commencing from Ross station, in McLennan county, shall be completed and finished. After the completion of the fifty miles aforesaid other bonds of this series may be issued, at the rate only of fifteen thousand dollars per mile of completed road, as follows—that is to say: Seventy-five bonds may be issued for each five miles of railway as the same may be completed beyond and in addition to said first fifty miles, on the affidavit of the chief engineer of said railroad company that said five miles have been so completed and are ready for use, it being expressly understood that the said seven hundred and fifty bonds and the said bonds to be issued after the completion of the fifty miles aforesaid shall be equally secured by these presents; and it is further agreed and understood that every bond issued under this mortgage or deed of trust shall be certified by the Farmers' Loan and Trust Company of the City of New York to be one of the series authorized to be issued by virtue hereof or under this deed of trust,

and no bond shall be valid under this deed or entitled to its protection and security unless it shall be so certified.

It is further understood and agreed that the bonds hereinbefore described and hereby secured shall pass by delivery or by
159 transfer on the books of the said Texas Central Railway Company, and that after a registration of the ownership of said bonds, certified thereon by the transfer agent of said railway company, no transfer of said bonds except upon the transfer books of said company shall be valid, unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer as aforesaid, at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired, and not otherwise; and to this end the said Texas Central Railway Company will keep in the city of New York a registration and transfer office, with the necessary books, in which the registration and transfer of said bonds may be made, as above provided.

And the said Texas — Railway Company, for itself and successors and assigns, hereby covenants and agrees that in case of the default in the payment of the principal of said bonds or any installment of interest thereon it will at once, upon demand, deliver possession of the railroad and other property herein conveyed to the trustee herein named or to its successor, successors, or assigns.

The said Texas Central Railway Company hereby further agrees, for itself, its successors, and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expense of the transfer agent herein provided for and appointed; and the said Farmers' Loan and Trust Company of the City of New York hereby accepts this conveyance and covenants to perform the trust hereby vested in it according to the terms of this deed and the bonds aforesaid.

In case a vacancy shall occur in this trust from any cause whatsoever it shall be lawful for the said railway company or any of the bondholders to apply in writing to the then chief justice of the supreme court of the State of Texas to appoint another trustee or trustees to supply the vacancy; and in the event that said application be made by any of the bondholders, then and in that
160 case notice of said application shall be given to the said railway company at least ten days before said vacancy shall be filled, and the said chief justice is hereby authorized, upon application and notice as aforesaid, without legal proceedings, to appoint one or two trustees to fill the vacancy; and the trustee or trustees so appointed shall be vested with all the titles, powers, duties, and estates possessed under this instrument by the said Farmers' Loan and Trust Company of the City of New York.

And the said Farmers' Loan and Trust Company of the City of New York, its successor or successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent em-

ployed by it when such agent shall have been employed with reasonable discretion.

It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with a foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate in such cases by any court of competent jurisdiction.

For the purpose of designating the rolling stock that shall belong to the line of railroad hereby mortgaged it is agreed by and between the parties hereto that the said railway company will mark in some substantial manner all engines and cars of each and every class hereafter purchased by it with either the name of said company or the initials of its name.

In testimony whereof the said Texas Central Railway Company has caused its seal to be hereto affixed and these presents to be signed by its president and secretary on this the fifteenth day of September, A. D. one thousand eight hundred and seventy-nine.

[SEAL.]

TEXAS CENTRAL RAILWAY COMPANY,
By G. JORDAN,
Vice-Pres't, Acting President.

Attest: A. S. RICHARDSON, *Sec'y.*

161 And the said Farmers' Loan and Trust Company of the City of New York, trustee herein, has, by its president, also signed these presents and attached its corporate seal hereto in signification of its acceptance of the trust herein created.

[SEAL.]

THE FARMERS' LOAN AND TRUST CO.,
By R. G. ROLSTON, *Pr's.*

Attest: GEO. P. FITCH, *Sec'y.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Before me, Joseph M. Bulger, a commissioner for the State of Texas in and for the county and State aforesaid, duly commissioned and qualified, personally appeared the Farmers' Loan and Trust Company, by its president, Roswell G. Rolston, who acknowledged that he signed the foregoing instrument and affixed the seal of the corporation thereto for the consideration, uses, and purposes therein stated.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-ninth day of September, A. D. 1879.

[SEAL.]

JOS. M. BULGER,
Commissioner for the State of Texas in New York.

THE STATE OF TEXAS, }
County of McLennan. }

I, J. W. Baker, clerk of the county court of McLennan county,

Texas, do hereby certify that the above and foregoing mortgage or trust deed and certificate attached thereto was filed for record on the 6th day of October, A. D. 1879, at 7½ o'clock a. m., and
162 was recorded on McLennan County Mortgage Book I, pages 382 to 389, on 7th October, A. D. 1879, at 10 o'clock a. m.

Given under my hand and seal of said county court, at office, in Waco, this the 7th day of October, A. D. 1879.

[SEAL.] J. W. BAKER,
Clerk County Court McLennan Co., Texas,
By P. H. POGUE, *Deputy.*

Certificate of Record.

STATE OF TEXAS, }
County of Hill, } *ss:*

I, Jas. M. Duncan, clerk of the county court in and for said county, do hereby certify that the foregoing instrument of writing was duly and correctly recorded in my office on the 10th day of October, 1879, at 12.25 o'clock p. m., in Deed Record Book Y, page 400 to 409, inclusive.

In witness whereof I hereunto sign my name and affix the seal of said court, at office, in Hillsboro', this 10th day October, 1879.

[SEAL.] JAMES M. DUNCAN,
Clerk County Court Hill Co., Texas.

STATE OF TEXAS, }
County of Bosque, } *ss:*

I, F. M. Collier, clerk of the county court of Bosque county, Texas, do hereby certify that the above and foregoing mortgage or trust deed with attached certificate was filed for record on the
163 11th day of Oct., A. D. 1879, at 1 o'clock p. m., and was duly recorded in Bosque County Deed Records, Book S, pages 347, 348, 349, 350, 351, 352, 353, 354, and 355.

Witness my official signature and the seal of the county court of Bosque county, Texas, at office, in Meridian, on this the 13 day of Oct., A. D. 1879.

[SEAL.] F. M. COLLIER,
Clerk County Court Bosque County, Texas,
By JNO. T. POPE, *Deputy.*

Endorsements: Filed for record 6th day of Oct'b'r, 1879, at 7½ a. m. J. W. Baker, Co. clerk of McLennan county, Texas. Book I, p. 382. Filed for record at 8.20 a. m., Oct. 10th, 1879. Jas. M. Duncan, cl'k Co. c't, by E. B. Reonis, d'p'y. Filed for record Oct. 11th, 1879, at 1 o'c'k p. m., and recorded in Book S, pages 347 to 345, inclusively. F. M. Collier, cl'k, by Jno. T. Pope.

164 SCHEDULE B.

The Texas Central Railway Co. to the Farmers' Loan and Trust Co. of the City of New York.

This deed, made and entered into this sixteenth day of May, A. D. 1881, by and between the Texas Central Railway Company, a corporation organized under and by virtue of the laws of the State of Texas, party of the first part, hereinafter denominated railway company, and the Farmers' Loan and Trust Company of the City of New York, a corporation created and existing under the laws of the State of New York, trustee, party of the second part, hereinafter denominated trustee, witnesseth:

Whereas the Texas Central Railway Company, in pursuance of the laws of the State of Texas, has amended its charter authorizing it to extend and construct its railway from its present terminus, near the centre of Eastland county, through the counties of Eastland, Callahan, Stephens, Shackelford, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman, to a point on the north boundary line of Texas, a distance of about three hundred and seventy-five miles; also to construct a branch railway from the company's
165 main line to Whitney, in Hill county, through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie, to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; also to construct a branch railway from a point in Hopkins county on the line of the proposed railway from Whitney to the point on Red River in Bowie county, through the counties of Hopkins, Delta, and Lamar, to a point on Red River in Lamar county near the mouth of Boggy river, a distance of about sixty-five miles;

And whereas the said Texas Central Railway Company, to meet the expense of constructing, completing, and putting into operation the extension of its said railway and the branch lines authorized to be constructed by said amendment to its charter, and for the purpose of exchanging and retiring the series of bonds issued by the said railway company, bearing date September 15th, 1879, amounting in the aggregate to $2,145,000, and numbered consecutively from 1 to 2145, inclusive, and which are secured by a mortgage on its line of railway from the town of Ross, in McLennan county, to the town of Cisco, in Eastland county, a distance of one hundred and forty-three miles, executed September 15th, 1879, to the Farmers' Loan and Trust Company of the City of New York, has resolved to issue and negotiate, as by law and action of the stockholders it is duly authorized, a series of bonds of one thousand dollars each, at the rate of fifteen thousand dollars to each mile of road, all of which bear date the sixteenth day of May, A. D. 1881, and which are made

payable to the Farmers' Loan and Trust Company of the City of New York, or bearer, on the 1st day of May, A. D. 1911, for value received, at its agency in the city of New York, with interest from date at the rate of seven per centum per anuum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, the principal and interest of said bonds being payable in gold coin of the present weight and fineness as fixed by the laws of the
166 United States now in force, and which bonds are also exempt from any income tax that now is or hereafter may be levied or provided for by any law of the United States, which said bonds, and the interest to become due thereon, are to be all equally secured by these presents, although issued at different times, and to be authenticated by a certificate to be signed by the said trustee that the same are issued in accordance with this deed of trust or mortgage:

Now, therefore, to secure the prompt payment of the principal and interest of the bonds herein described and hereby secured, and for the further consideration of one dollar to it duly paid by the said Farmers' Loan and Trust Company of the City of New York, the receipt of which is hereby acknowledged, the said Texas Central Railway Company has granted, bargained, and sold, conveyed, transferred, and confirmed, and by these presents doth grant, bargain, and sell, convey, transfer, and confirm, unto the said Farmers' Loan and Trust Company of the City of New York, its successor, successors, and assigns in this trust forever, all and singular the main line of the said Texas Central Railway Company's railway, built and to be built, beginning at the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackleford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas between the 101st and 102d meridian of west longitude, a distance of about three hundred and seventy-five miles, and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles, and also upon all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning
167 at a point in Hopkins county on the said company's branch line of railway from Whitney to Red River, in Bowie county, thence through the counties of Hopkins, Delta, and Lamar to a point on Red River in Lamar county near the mouth of Boggy river, a distance of about sixty-five miles, together with all side tracks, turnouts, rolling stock, equipments, and materials, all rights of way and tracks, depot and shop grounds, tenements and heredita-

ments, rights and franchises, including and meaning to include all the property, real and personal, now acquired or which hereafter may be acquired by the said company in the State of Texas used for and pertaining to the operation of the said railway, as herein described: Provided, That nothing herein contained shall create any lien upon the lines of railway that the Texas Central Railway Company may hereafter acquire or construct not included in the said extended line or branches herein described nor upon the equipments, appointments, appurtenances, revenues, property, real or personal, rights and, franchises of said railway hereafter constructed and acquired as aforesaid:

To have and to hold the said railway, property, and premises and rights hereby conveyed or intended so to be unto the said Farmers' Loan and Trust Company of the City of New York and its successor, successors, or assigns, in trust for the owners and holders of said bonds or any of them, subject to the terms and stipulations of said bonds and the interest coupons thereto annexed and the provisions of the articles of incorporation of said company, and subject also to the possession, control, and management of the directors of said railway company so long as said company shall well and truly perform all and singular the stipulations of the bond aforesaid and the covenants of this deed.

And in the event that the said railway company shall pay or cause to be paid the principal of said bonds and the several installments of interest thereon as the same become due, then this deed and all herein contained shall be void, and the property hereby conveyed shall revert to and revest in the said Texas Central
168 Railway Company, its successors and assigns, without any acknowledgment or satisfaction, reconveyance, or other act; but in case the Texas Central Railway Company shall fail to pay the principal or any part thereof or any of the interest on any of the said bonds at any time when the same may become due and payable according to the tenor thereof, and if the said default shall continue sixty days after having been demanded, then and thereupon the principal of all the said bonds hereby secured shall be and become immediately due and payable; and upon the request of the holder or holders of seventy-five per cent. of said bonds then outstanding, and written notice of said request being served on the New York agency of the party of the first part, at which said bonds and coupons are made payable, the said trustee (who may act by its president or attorney) or its successor or successors in this trust may and shall take actual possession (with or without entry or foreclosure) of said railway hereby conveyed and of all and singular the said mortgaged property, and shall manage and operate the same and receive all the income and profits of the same, together with all the books, papers, records, accounts, and money of said railway company, first defraying out of the same the expenses of the road and its needful repairs and the management of said trust, and — the surplus to pay the interest and principal of all the bonds issued hereunder which may be due and outstanding and hereby secured *pro rata*.

And upon the request of the holder or holders of seventy-five per cent. in amount of the bonds so in default which may be at any time outstanding under this deed of trust it shall be the duty of the said Farmers' Loan and Trust Company of the City of New York, by its president or agent duly appointed in its behalf, to foreclose this mortgage or deed of trust and sell the property herein and hereby conveyed at the city of Houston, Texas, at public auction to the highest bidder for cash, after having given at least sixty days' notice of the time, place, and terms of sale by advertisement in at least two daily newspapers published in the city of Houston and two daily newspapers published in the city of New York; and upon making such sale said Farmers' Loan and Trust Company of the City of New York, its successors or assigns in this trust, shall
169 execute to the purchaser or purchasers thereof an absolute deed to the property hereby conveyed; and it, the said Farmers' Loan and Trust Company of the City of New York, its successors and assigns in this trust, shall receive the net proceeds of such sale and apply the same as follows, to wit:

First. To the payment of the costs and expenses of this trust, including a reasonable commission or compensation to the trustee.

Second. To the payment of the principal of said bonds and interest thereon to the day of sale, and in case the proceeds of said sale are not sufficient to pay the whole of said principal and interest to the day of sale, then said trustee shall apportion the same *pro rata* among the holders of said bonds and coupons; and,

Third. If, after paying all of said bonds and the interest thereon to the day of sale, there shall remain a surplus said trustee shall pay the same to the Texas Central Railway Company, its successors or assigns.

And the said Texas Central Railway Company hereby further agrees to and with the said Farmers' Loan and Trust Company of the City of New York, its successors and assigns in this trust, that it, the said railway company, shall and will create a sinking fund from its earnings for the redemption and purchase of said bonds and each of them by depositing with the said trustee, from and after the first day of January, one thousand eight hundred and eighty-five, and annually thereafter, until the maturity of said bonds, on or before the first day of April in each year, a sum annually equal to two per centum of the amount of such bonds as shall then be outstanding and unpaid, which said sum shall be paid in gold coin of the weight and fineness herein mentioned; and the said moneys shall be invested by the said trustee in the purchase of said bonds at the lowest price at which the same can be conveniently bought, after having advertised for the same in two or more newspapers in the city of New York, provided such purchase can be made at or below the price of one thousand and one hundred dollars per bond; but it is understood that in case sufficient of said bonds to absorb the
170 amount to be paid into said sinking fund cannot be purchased or are not offered to said trustee at or below the price above mentioned, then said trustee or its successor, successors, or assigns shall, within thirty days after the receipt of said money,

invest the same in United States Government bonds on the most favorable terms practicable; and in determining what bonds shall by purchased or redeemed with the sinking fund aforesaid it shall be the duty of said trustee to accept and pay the bonds offered to it at the lowest price within thirty days after the receipt of each installment of said sinking fund, and in case the bonds of different parties are offered at the same price it shall be the duty of said trustee to accept and pay those first offered within said thirty days, and the bonds and coupons so purchased shall be cancelled and a certificate of the numbers and amounts of said bonds shall be immediately furnished by said trustee to the treasurer of the Texas Central Railway Company.

It is further covenanted by the said Texas Central Railway Company that the proceeds of these bonds shall be applied in good faith to the construction, improvement, and equipment of said railway and putting the same into operation, and also for the purpose of exchanging and retiring the said bonds of date September 15, 1879, as hereinafter mentioned. It is, however, expressly agreed that the said railway company may dispose of the current net revenues and income of all the said property and railway hereby conveyed in such manner as it shall deem best until default shall be made in the payment of the interest or principal of said bonds or of any one or more of them, and shall have the right to sell and dispose of any of such real estate or other property as it may own or acquire which may not be needed or required for the purposes and business of said railway, and which sale and conveyance of said property shall transfer the said property and title free from the encumbrances of this mortgage or deed of trust, and to change its tracks and make any and all alterations necessary for the benefit of the same.

And it is further provided and hereby covenanted and agreed that the sum of two millions one hundred and forty-five thousand
171 dollars ($2,145,000) of the said bonds hereby intended to be secured shall be reserved by the said trustee and shall not be issued except for the purpose of exchanging and retiring the series of bonds now outstanding, amounting in the aggregate to the sum of two million one hundred and forty-five thousand dollars ($2,145,000), issued by the said railway company, and the payment of which is secured by a mortgage upon that portion of the railway of said company extending from the town of Ross, in McLennan county, to the town of Cisco, in Eastland county.

It is further provided that in the event of the said railway company paying any of the series of bonds bearing date September 15, 1879, hereinbefore mentioned, then the trustee herein named shall sign and deliver to the said railway company a like amount of bonds issued under this deed.

And also when evidence is furnished of the payment of any amount of the two per cent. sinking fund provided for by the mortgage hereinbefore mentioned to the trustee therein named, then and in such case the said trustee herein named shall sign and deliver to the said railway company bonds of this series in amount equal to the amount so paid.

It is further provided and agreed that, whenever authorized and requested so to do in writing by the president or vice-president of the said railway company, the trustee shall receive of the holder of any of the bonds issued under the mortgage executed September 15, 1879, now outstanding any number of the said bonds designated in said written request, and shall deliver to the holder or holders in lieu thereof an equal number and amount of the bonds of this issue, and the bonds so delivered to the trustee shall be held for the security of the holders of the series of bonds authorized under this trust.

It is further provided and agreed that whenever any of the bonds issued under the said mortgage executed September 15, 1879, are purchased or taken up by exchange they shall not be cancelled or the mortgage given to secure the payment thereof discharged until
172 such time as the trustee herein named has the entire amount of bonds purporting to be secured under the said mortgage, when and whereupon, at the request of the president, acting under the authority of the board of directors of said railway company, it, the said trustee, shall surrender said bonds cancelled to the said railway company, who shall thereupon procure or cause to be satisfied and discharged the mortgage given to secure the payment of said bonds.

And upon the satisfaction and discharge of the said mortgage executed September 15, 1879, the balance of sinking fund remaining in the hands of the trustee of that mortgage and the accumulated interest realized on the same or the bonds in which the same has been invested shall be paid to the Farmers' Loan and Trust Company, trustee of this mortgage, and the same shall be regarded as a part of the sinking fund of the bonds issued under this mortgage.

It is further provided that all of the bonds received in exchange for bonds issued hereunder shall be held by the trustee herein named as follows:

First. As an additional security for the payment of the principal and interest of the bonds issued under this deed.

Second. For the benefit and security of the Texas Central Railway Company, its successors and assigns.

All bonds so received in exchange for bonds issued under this deed shall be stamped with words substantially as follows, viz: "This bond belongs to the trustee named in the deed of trust made by the Texas Central Railway Company, dated the sixteenth day of May, 1881, and is not negotiable." And it is provided that evidence of the payment of the two per cent. sinking fund on the amount of said bonds so held and endorsed to the trustee of the mortgage executed September 15, 1879, hereinbefore mentioned, shall be in lieu of the two per cent. sinking fund of a like amount of bonds of this series.

It is understood and agreed that until default in the payment of the coupons of the bonds of this series the said Farmers' Loan
173 and Trust Company shall from time to time, as they mature, cancel and deliver to the said railway company the corresponding coupons of such of the bonds of the series of September 15,

1879, as may have been delivered to them under the provisions of this trust.

It is further agreed that all bonds issued under this trust, whether issued for purposes of construction or for the purpose of retiring the bonds issued under the deed of trust of September 15, 1879, shall be equally secured and shall be numbered consecutively as issued, but when issued for purposes of construction they shall be issued only at the rate of $15,000 per mile of completed road, as follows—that is to say, seventy-five bonds may be issued for each five miles of railway, either of the extension or branches, as the same may be completed on the affidavit of the chief engineer of said railway company that said five miles have been completed and are ready for use; and it is further agreed and understood that every bond issued under this mortgage or deed of trust shall be certified by the Farmers' Loan and Trust Company of the City of New York to be one of the series authorized to be issued by virtue hereof or under this deed of trust, and no bond shall be valid under this deed or entitled to its protection and security unless it shall be so certified.

It is further understood and agreed that the bonds hereinbefore described and hereby secured shall pass by delivery or by transfer on the books of the said Texas Central Railway Company, and that after a registration of the ownership of said bonds, certified thereon by the transfer agent of said railway company, no transfer of said bonds except upon the transfer books of said company shall be valid unless the last transfer shall be to bearer, which transfer to bearer shall again render said bonds transferable by delivery, and that said bonds shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each successive holder, provided the coupons issued with the same and not due are attached to said bonds when such registration is desired, and not otherwise; and to this end the said Texas Central Railway Company will keep in the city of New York a registration and
174 transfer office, with the necessary books, in which the registration and transfer of said bonds may be made as herein provided.

And the said Texas Central Railway Company, for itself and its successors and assigns, hereby covenants and agrees that in case of the default in the payment of the principal of said bonds or any installment of interest thereon for the period of sixty days, as before provided, it will at once, upon demand, deliver possession of the railroad and other property herein conveyed to the trustee herein named or to its successor, successors, or assigns.

The said Texas Central Railway Company hereby further agrees, for itself, its successors and assigns, that it will from time to time pay all the expenses of this trust, including the compensation and expenses of the transfer agent herein provided for and appointed.

And the said Farmers' Loan and Trust Company of the City of New York hereby accepts this conveyance and covenants to perform the trust hereby vested in it according to the terms of this deed and the bonds aforesaid.

In case a vacancy shall occur in this trust from any cause what-

soever it shall be lawful for the said railway company or any of the bondholders to apply in writing to the then chief justice of the supreme court of the State of Texas to appoint another trustee or trustees to supply the vacancy; and in the event that said application be made by any of the bondholders, then and in that case notice of said application shall be given to the said railway company at least ten days before said vacancy shall be filled; and the said chief justice is hereby authorized, upon application and notice as aforesaid, without legal proceedings, to appoint one or two trustees to fill the vacancy, and the trustee or trustees so appointed shall be vested with all the titles, powers, duties, and estates possessed under this instrument by the said Farmers' Loan and Trust Company of the City of New York.

And the said Farmer's Loan and Trust Company of the City of New York, its successor or successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by it when such agent shall have been employed with reasonable discretion.

It is hereby further agreed that nothing herein contained shall be held or construed to prevent or interfere with a foreclosure of this instrument, the appointment of a receiver, or any other act or proceeding appropriate in such cases by any court of competent jurisdiction.

For the purpose of designating the rolling stock that shall belong to the line of railroad hereby mortgaged it is agreed by and between the parties hereto that the said railway company will mark in some substantial manner all engines and cars of each and every class hereafter purchased by it with either the name of said company or the initials of its name.

In testimony whereof the said Texas Central Railway Company has caused its seal to be hereto affixed and these [SEAL.] presents to be signed by its president and secretary on this the sixteenth day of May, A. D. one thousand eight hundred and eighty-one.

THE TEXAS CENTRAL RAILWAY COMPANY,
By CHAS. A. WHITNEY, *Pres't.*

Attest: A. S. RICHARDSON, *Sec'y.*

And the said Farmers' Loan and Trust Company of the City of New York, trustee herein, has, by its president, [SEAL.] also signed these presents, and attached its corporate seal hereto in signification of its acceptance of the trust herein created.

THE FARMERS' LOAN AND TRUST CO.,
By R. G. ROLSTON, *Pr't.*

Attest: GEO. P. FITCH, *Sec'y.*

176 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this third day of June, A. D. 1881, before me, Chas. Edgar Mills, a commissioner of the State of Texas in and for the State of New York, residing in said city of New York, personally appeared Charles A. Whitney, the president of the "Texas Central Railway Company," known to me and to me personally known to be such officer, who, being by me duly sworn, did depose and say that he resided in New Orleans, Louisiana; that he was the president of said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order as the president of said company; and the said Charles A. Whitney, whose name is signed to the foregoing instrument as such president, further acknowledged that he had executed the same to be his free act and deed and the free act and deed of said company for the purposes and considerations therein expressed.

Given under my hand and official seal this 3d day of June, A. D. 1881.

[SEAL.] CHARLES EDGAR MILLS,
Commissioner for Texas in New York.

THE STATE OF TEXAS, }
County of Harris. }

Before me, Jas. A. Baker, Jr., a notary public in and for said State and county, on this day personally appeared A. S. Richardson, known to me to be the person whose name is subscribed to the foregoing instrument as secretary of the Texas Central Railway Company, and acknowledged to me that he signed the same
177 and attached thereto the seal of said company as said secretary for the purposes and consideration therein expressed.

Given under my hand and seal of office this 23d day of June, A. D. 1881.

[SEAL.] JAS. A. BAKER, JR.,
Notary Public, H. C.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 28th day of June, in the year one thousand eight hundred and eighty-one, before me, the undersigned, Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Texas to take acknowledgement of deeds, etc., to be used or recorded therein, personally appeared the Farmers' Loan and Trust Company, by its president, Rosewell G. Rolston, and secretary, Geo. P. Fitch, known to me to be the persons whose names are subscribed to the within instrument as president and secretary of said company, who severally acknowledged to me

that they executed the same for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first aforesaid.

[SEAL.] EDWIN F. COREY,

Commissioner for the State of Texas; Office, 45 Wall Street, N. Y.

THE STATE OF TEXAS, }
County of McLennan. }

I, J. W. Baker, clerk of the county court of McLennan county, do hereby certify that the foregoing mortgage, executed May 16th, 1881, by the Texas Central Railway Company in favor of the Farmers' Loan and Trust Company, was filed for record in the office of the county clerk of McLennan county on the 28th day of July,
178 A. D. 1881, at 7 o'clock a. m., and was recorded on the 29th day of July, at 5¼ o'clock p. m., A. D. 1881, in Book "J" of Mortgages of said county, pages 592 to 603, inclusive, and was also entered on page 123 of Book "M" of Chattel Mortgages of said county.

In witness whereof I hereunto sign my name and affix the seal of said county court, at my office, in Waco, Texas, this 29th day of July, A. D. 1881.

[SEAL.] J. W. BAKER,

Clerk County Court of McLennan County, Texas.

THE STATE OF TEXAS, }
County of Hill. }

I, Davie Derden, clerk of the county court of Hill county, do hereby certify that the mortgage executed May 16th, 1881, by the Texas Central Railway Company in favor of the Farmers' Loan and Trust Company was filed for record in the office of the county clerk of Hill county on the 28th day of July, A. D. 1881, at 4 o'clock p. m., and was recorded on the 30th day of July, A. D. 1881, in Book "A" of Mortgages of said county, pages 23 to 35, and was also entered on page — of Book "A" of Chattel Mortgages of said county.

In witness whereof I hereunto sign my name and affix the seal of said county court, at my office, in Hillsboro', this 30th day of July, A. D. 1881.

[SEAL.] DAVE DERDEN,

Clk. Co. Ct Hill Co., Texas.

THE STATE OF TEXAS, }
County of Erath. }

I, John S. Hyatt, clerk of the county court of Erath county, do hereby certify that the mortgage executed May 16th, 1881, by the Texas Central Railway Company in favor of the Farmers' Loan and Trust Company was filed for record in the office of the
179 county clerk of Erath county on the 29th day of July, A. D. 1881, at 7 o'clock a. m., and was recorded on the 30th day of July, A. D. 1881, in Book "B" of Mortgages of said county, pages

230 to 239, and was also entered on page 126 of Book "A" of Chattel Mortgages of said county.

In witness whereof I hereunto sign my name and affix the seal of said county court, at my office, in Stephenville, this 30th day of July, A. D. 1881.

[SEAL.] JOHN S. HYATT,
Clerk County Court, Erath County, Texas.

THE STATE OF TEXAS, }
County of Eastland. }

I, Ike P. Schmick, clerk of the county court of Eastland county, do hereby certify that the mortgage executed May 16th, 1881, by the Texas Central Railway Company in favor of the Farmers' Loan and Trust Company was filed for record in the office of the county clerk of Eastland county on the 29th day of July, A. D. 1881, at 9 o'clock a. m., and was recorded on the 2d day of August, A. D. 1881, in Book No. 1 of Mortgages of said county, pages 236 to 252, and was also entered on page 4 of Book, vol. 1, of Chattel Mortgages of said county.

In witness whereof I hereunto sign my name and affix the seal of said county court, at my office, in Eastland, this 2d day of August, A. D. 1881.

[SEAL.] IKE P. SCHMICK,
C. C. C., E. C., Texas.
E. L. WOOD, *Deputy.*

STATE OF TEXAS, }
County of Shackelford. }

I, Sam'l Spears, clerk of the county court of Shackelford county, do hereby certify that the mortgage executed May 16th, 1881, by the Texas Central Railway Company in favor of the Farmers'
180 Loan and Trust Company was filed for record in the office of the county clerk of Shackelford county on the 29th day of July, A. D. 1881, at 2.30 p. m., and was recorded on the 30th day of July, A. D. 1881, in Book "F" of Deeds and Mortgages of said county, pages 586 to 599, inclusive, and was also entered on page 4 of Book — of Chattel Mortgages of said county.

In witness whereof I hereunto sign my name and affix the seal of said county court, at my office, in Albany, this 30th day of July, A. D. 1881.

[SEAL.] SAM'L SPEARS,
Clk Co. Court, S. C., T.

Endorsement: Filed for record July 28th, 1881, at 7 o'clock a. m. J. W. Baker, clerk county court, McLennan county, Tex.

181 *Appearance of the Metropolitan Trust Co. to the Cross-Bill. Filed June 28, 1886. J. H. Finks, Clerk,*

United States Circuit Court, Northern District of Texas. In Chancery.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Defendants.

THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, Cross-Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Cross-Defendants.

To the clerk of the circuit court of the United States for the northern district of Texas:

Please enter our appearance in the above-entitled cross-action for the Metropolitan Trust Company of the City of New York, cross-defendant named in the cross-bill of the Farmers' Loan and Trust Company, cross-complainant.

Dated New York, June 24, 1886.

THOMAS G. HILLHOUSE,
L. C. ALEXANDER,
Solicitors for the Metropolitan Trust Company of the City of New York.

182 *Appearance of Complainant in Original Bill to Cross-Bill of Farmers' Loan & Trust Co. Filed July 6, 1886. J. H. Finks, Clerk.*

In the U. S. Circuit Court, Northern District of Texas, at Waco. In Equity.

Between—

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainants,
and
THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN & TRUST COMPANY, *et al.*, Defendants.

In the above cause notice is hereby accepted from the Farmers' Loan & Trust Company of its application for leave to file a cross-bill against its codefendants, and no objection is made thereto on the part of the said complainant, reserving all legal rights in the premises.

FARRAR & KRUTTSCHNITT,
Solicitors for Complainant.

U. S. C. C., Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS R. R. & S. S. Co.
vs.
TEXAS CENTRAL RAILWAY Co. *et al.* } No. 21.

183 The clerk of the above court will please enter our appearance as solicitors for complainant in above cause, defendant to cross-bill filed by Farmers' Loan & Trust Company in said cause.

August 2d, 1886.

FARRAR & KRUTTSCHNITT,
Solicitors for Morgan's La. & T. R. R. & S. S. Co.

184 Appearance of Farrar & Kruttschnitt as solicitors for Morgan's Louisiana and Texas R. R. & S. S. Co. to the cross-bill of complainant. Filed Aug. 2, 1886. J. H. Finks, clerk.

United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Equity.

The clerk is hereby instructed to enter in the chancery order book on the rule day in August the appearance of Farrar & Kruttschnitt as solicitors for Morgan's Louisiana and Texas Railroad and Steamship Company to the cross-bill of the Farmers' Loan & Trust Company.

FARRAR & KRUTTSCHNITT,
Sol'rs M. L. & T. R. R. & S. S. Co.

185 *Agreement Extending Time to File Answers until Rule Day in September,* 1886. *Filed Aug.* 3, 1886. *J. H. Finks, Clerk.*

United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LA. & TEXAS R. R. & S. S. Co.
vs.
THE TEXAS CENTRAL RAILWAY Co. *et als.* } No. 21. In Equity.

It is hereby agreed between the solicitors for the complainant, The Farmers' Loan & Trust Company, and for the Texas Central Railway Company that the Texas Central Railway Company shall have until the rule day in September in which to file its answer to the original and cross bills herein filed.

FARRAR & KRUTTSCHNITT,
Sol'rs M. L. & T. R. R. & S. S. Co.
BALLINGER, MOTT & TERRY,
Sol'rs for F. L. & T. Co.
BAKER, BOTTS & BAKER,
Sol'rs for T. C. R'y Co.

186 Circuit Court of the United States for the Fifth Circuit, at Waco.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee and Complainant,
versus
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
No. 33. In Equity.

The Separate Answer of the Defendant, The Texas Central Railway Company.

Baker, Botts & Baker, solicitors for defendant railway Co.

Filed Sept. 6, 1886.

J. H. FINKS, *Clerk.*

187 In the Circuit Court of the United States for the Fifth Circuit, at Waco.

THE FARMERS' LOAN & TRUST COMPANY, Trustee and Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY and Others, Defendants.
No. 33. In Equity.

The separate answer of the Texas Central Railway Company to the bill of complaint of the Farmers' Loan & Trust Company as trustee, filed as a cross-bill, by leave of the court, in the case of Morgan's Louisiana & Texas Railroad and Steamship Company against this defendant and others.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereto or unto such parts thereof as this defendant is advised it is material or necessary for it to make answer unto — this defendant, for itself only answering, says:

I, II, III, IV, V, VI, and VII.

For answer to so much of complainant's bill of complaint as is contained in paragraphs one to seven, inclusive, defend-
188 ant admits all the matters and things therein alleged to be true.

VI.

For answer to the second paragraph numbered six in complainant's bill defendant admits the same to be true as therein alleged, and that all the bonds issued under the mortgages of September 15, 1879, are outstanding.

VIII, IX, X, XI, and XII.

For answer to paragraphs eight, nine, ten, eleven, and twelve of complainant's bill defendant admits the matters and things alleged in each of them to be true as therein stated, but says that none of the bonds issued under the mortgage of September 15, 1879, were retired or extinguished by the bonds issued under the mortgage of May 16, 1881, and that all the bonds issued under the last named are now outstanding.

XIII.

Answering paragraph thirteen of complainant's bill, defendant says it is true that on or about the — day of October, 1884, it did make, execute, and deliver in the usual form to the Metropolitan Trust Company of New York another mortgage, which is known as its general mortgage, by which it conveyed to said trustees in trust to secure bonds to be issued thereunder all its property of every sort, kind, and description, and said mortgage is of record in the several counties through which the defendant's road runs. About the time that said mortgage was made and bonds issued under it, as will be hereafter stated, this defendant was indebted to the Houston & Texas Central Railway Company for money advanced in and about the operation of its road in the sum of $761,992.04, and by order of de-

189 fendant's board of directors defendant made, executed, and delivered to the Houston & Texas Central Railway Company sixteen of its promissory notes of date November 1, 1884, and bearing six per cent. per annum interest, one for $11,992.04 and fifteen others for $50,000 each.

Defendant issued under said general mortgage 2,286 bonds of $1,000 each, aggregating $2,286,000, and by order of its board of directors these bonds were pledged to the Houston & Texas Central Railway Company to secure the payment of the above-named notes—that is to say, 150 of said bonds were pledged to secure the payment of each of said notes for $50,000 and the remaining 36 of them were pledged to secure the payment of the $11,992.04 note, and each of said notes specified on its face by number of the bond the particular bonds which were intended to secure its payment. Said bonds were then forwarded to the Metropolitan Trust Company to be certified in accordance with the requirements of said mortgage, but before this was done defendant's property was placed in the hands of receivers at the suit of Morgan's Louisiana & Texas Railroad and Steamship Company mentioned in complainant's bill, and said bonds are still held by said Metropolitan Trust Company, but have not been certified by that company so far as defendant knows or has reason to believe.

XIV.

Answering paragraph fourteen of complainant's bill, defendant admits that it did fail to pay the interest maturing the first of May, 1885, on its bonds issued under its mortgage of September 15, 1879, as alleged, but on a bill filed in this honorable court at Waco on the

14th day of May, 1885, by Morgan's Louisiana & Texas Railroad and Steamship Company all of defendant's railroads and other property were placed in the hands of receivers appointed under that bill, and from thence ever since said receivers have been in the actual and exclusive possession of the same, operating said road
190 under the order of this court and receiving all moneys and revenues thereof. With this statement in explanation defendant admits said paragraph to be true as alleged.

XV.

Defendant admits the allegation in paragraph fifteen of complainant's bill to be true as stated.

XVI.

Defendant admits paragraph sixteen of complainant's bill to be true except that it does not admit that the claim of Morgan's Louisiana & Texas Railroad and Steamship Company was not well founded, nor that the court did not consider that suit well brought.

XVII.

Answering paragraph seventeen of complainant's bill, defendant admits that it knew the existence of the deeds of trust or mortgages which it had made, and that the complainant in this suit was trustee therein, and admits that it did not give complainant notice of the application for receivers, as alleged; but it is advised that such was not a duty incumbent upon it as between its creditors; but it denies that said receivers were appointed with the consent of defendant, through its solicitors, as alleged.

It admits that its solicitors were present when the motion to appoint receivers came on to be heard, and that the application was submitted to the court upon its merits for the court to do therein as to the court seemed legal, equitable, and right in view of the allegations contained in the bill.

As to whether the claim set up in that bill has a lien as therein claimed, and, if so, what are the respective rights of the complainant in that bill and the complainant in this, as between themselves, are questions of law which the defendant submits to the court.

191 XVIII and XIX.

Defendant admits that paragraphs eighteen and nineteen in complainant's bill are true, as therein alleged.

XX.

Answering the twentieth paragraph in complainant's bill, defendant admits that its indebtedness, bonded and otherwise, is so large that it is now unable to pay its floating debt, maintain itself, and pay the interest on its bonded debt from time to time, as it accrues, from its earnings, and that it has no other means of meeting the same. As to what course will be best for its creditors and itself defendant submits to the sound discretion of the court.

Conclusion.

Further answering, defendant denies all confederation and fraud in said bill of complaint charged, without this, that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered unto, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly craves to be hence dismissed with its reasonable costs and charges in that behalf most wrongfully sustained.

THE TEXAS CENTRAL R'Y CO.,
By CHAS. DILLINGHAM,
[L. S.] *Vice-President.*

Attest: H. HALL, *Secretary.*

BAKER, BOTTS & BAKER,
Solicitors for Defendant R'y Co.

192 *Separate Answer of Morgan's Louisiana & Texas Railway and Steamship Company.*

In the Circuit Court of the United States for the Northern District of Texas, Waco, Texas.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et als.*, Defendants. } No. 33.

The separate answer of Morgan's Louisiana & Texas Railroad and Steamship Company, one of the defendants herein, to the cross-bill of the Farmer's Loan and Trust Company, trustee.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and insufficiencies in the said cross-bill of complainant contained, for answer thereto or to such parts thereof as it is advised that it is material or necessary for it to make answer to, answers and saith:

1st. That, so far as this company is informed and believes, the matters set forth in the first, second, third, fourth, fifth, sixth,
193 seventh, eighth, ninth, tenth, eleventh, and twelfth paragraphs of the complainant's cross-bill of complaint are true.

2d. That, in answer to the averments of the thirteenth paragraph of the said complainant's cross-bill, this defendant avers and reiter-

ates the facts stated in its bill of complaint with reference to the mortgage of the Metropolitan Trust Company and with reference to the pledge of the certificates to secure the note held by this complainant.

3d. That the matters set forth in the fourteenth and fifteenth paragraphs of complainant's cross-bill of complaint are true.

4th. That the matters set forth in the sixteenth, seventeenth, and eighteenth paragraphs of the said complainant's cross-bill are partially true and partially untrue; that it is true that this defendant did file its original bill herein claiming a lien upon the property of the defendant, The Texas Central Railway Company, and did apply for and obtain the appointment of receivers of the property and assets of the said company. This defendant reiterates all the averments in the said bill and amended and supplemental bill of complaint contained and claims that it has a lien upon the property of the defendant, and claims that in any foreclosure proceeding which may be had in this cause that it is entitled to be paid out of the proceeds of the said sale, by preference over the mortgage creditors, the amounts due to it from the defendant, The Texas Central Railway Company.

And, further answering, this defendant avers—

That all of the revenues of said Texas Central Railway Company which have come into the hands of the said receivers since the filing of the bill on the fourth day of April, 1885, have been used by the said receivers for the betterment and improvement of the said
194 property, whereby the interests of the bondholders have been promoted and the value of the railroad increased, and that in any event, in case of foreclosure herein, this defendant is entitled to an account of such revenues as have been so used for the betterment and improvement of the estate of the bondholders aforsaid, as well as to an account of the sums diverted from the current earnings to the payment of interest, as prayed for in its original and amended bill.

Wherefore this defendant prays that in case your honors should decree the foreclosure herein and hereby asked for by the Farmers' Loan and Trust Company your honors will grant unto this defendant all of the rights and claims set forth in its original and its amended and supplemental bills herein filed, all of which matters and things are averred against the cross-complainant as fully as if the same were herein specifically set forth anew; and this defendant prays for all the relief prayed for in the said original and supplemental and amended bills as fully as if the said prayers were herein repeated anew, and this defendant prays that in addition to the matters therein prayed for *that* it may have an account of the sums expended by the receivers, Benjamin G. Clarke and Charles Dillingham, for the betterment and improvement of the Texas Central Railway Company, and that for all such sums so expended *that* there may be a decree in favor of this defendant, and that the amount of the sums so expended may be decreed a lien upon the property of the Texas Central Railroad Company paramount to the lien of the complainant, The Farmers' Loan and Trust Company, trustee.

And this defendant will ever pray as in duty bound.

FARRAR & KRUTTSCHNITT,
Solicitors and Counsel for Morgan's La. & Texas R. R. and S. S. Company.

195 Personally came and appeared before me the undersigned authority, J. G. Schriever, who, being duly sworn, deposes and says that he is the vice-president of the Morgan's Louisiana & Texas Railroad and Steamship Company and now acting president in the absence of A. C. Hutchinson, president; that he has read the foregoing answer and knows the contents of the same, and that the same is true so far as is stated as of his own knowledge, and that he believes the same to be true so far as is stated as upon his information and belief.

JOHN G. SCHRIEVER,
Vice-President and Acting President Morgan's La. & Tex. R. R. and S. S. Company.

Sworn to and subscribed before me this 31st day of August, 1886.

[L. S.] Witness my hand and seal as a qualified notary public of and for the parish of Orleans, La.

ANDREW HERD,
Notary Public.

Endorsed, to wit: No. 33. United States circuit court, northern district of Texas, at Waco. The Farmers' Loan and Trust Company *vs.* Texas Central Railway Co. *et als.* Separate answer of Morgan's Louisiana & Texas R'y & S. S. Co. Filed Sept. 6, 1886. J. H. Finks, clerk. Farrar & Kruttschnitt, attorneys for defendants.

196 *Replication of The Farmers' Loan and Trust Company to Answer — the Defendant in Cross-Bill.*

In the Circuit Court of the United States for the Northern District of Texas, Waco, Texas. In Equity.

MORGAN'S LOUISIANA & TEXAS STEAMSHIP AND RAILROAD COMPANY, Complainant, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Defendants,	Bill.
and	No. 21.
THE FARMERS' LOAN AND TRUST COMPANY Complainant, *vs.* THE TEXAS CENTRAL RAILROAD COMPANY AND Morgan's Louisiana and Texas S. & R. Co. *et al.*, Defendants.	Cross-Bill.

The replication of The Farmers' Loan and Trust Company, complainant in the above cross-bill, to the several answers of The Texas Central Railway Company and of Morgan's Louisiana and Texas Steamship Company, defendants to said cross-bill.

This replicant, saving and reserving to itself all and all manner

of advantages of exception to the manifold insufficiencies of
197 the said answer of the said defendants and each of them, for replication thereunto saith that it will aver and prove its said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that each of said answers of said defendants respectively is uncertain, untrue, and insufficient to be replied unto by this replicant, without this, that any other matter or thing whatever in said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replicant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by *his* said cross-bill it has already prayed.

BALLINGER, MOTT & TERRY,
Solicitors for Complainant in Cross-Bill.

H. B. TURNER,
Counsel for Complainant.

Endorsed, to wit: No. 33, eq. Morgan's Louisiana & Texas S. S. & R. R. Co. *vs.* Texas Central Railway Co. *et al.* and The Farmers' Loan and Trust Company, complainant in cross-bill, *vs.* Morgan's Louisiana & Texas S. & R. Co. *et al.*, defendants. Replication of the Farmers' Loan and Trust Co. to answer of defendants in cross-bill. Filed Oct. 4. 1886. J. H. Finks, clerk. Ballinger, Mott & Terry, solicitors for complainants in cross-bill.

198 The answer of the Metropolitan Trust Company of the City of New York to the bill of complaint (filed as a cross-bill) of the Farmers' Loan and Trust Company.

Circuit Court of the United States, Northern District of Texas.

THE FARMERS' LOAN AND TRUST COMPANY, as Trustee,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, *et al.*, THE METROPOLITAN TRUST COMPANY of the City of New York Impleaded.

This defendant, reserving to itself all right of exception to the said bill, for answer thereto saith—

It admits that during the month of October, 1884, the said defendant railway company made and delivered to it the mortgage or deed of trust in paragraph XIII mentioned, and alleges that no bonds have to this defendant's knowledge or belief been issued secured by the lien thereof.

It admits the allegations in paragraph I set forth, and
199 further admits, for the purposes of this suit, the allegations set forth in paragraphs II and III, and also the allegations respecting the mortgage or deed of trust and the bonds issued thereunder set forth in paragraphs IV, V, VI, VII, VIII, IX, X, XI, XII, and the allegations respecting the bill filed April 4, 1885, by Morgan's Louisiana and Texas Railroad and Steamship Company and the purport of said bill as set forth in paragraph XVI.

And, further answering, this defendant saith that as to the matters and things in the complainant's cross-bill alleged, except as hereinbefore expressly admitted, it has no knowledge or information sufficient to form a belief and leaves the complainant to make such proof thereof as it may be able to produce and as it may be advised.

And this defendant prays that it may be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] THE METROPOLITAN TRUST COMPANY
OF THE CITY OF NEW YORK,
By THOS. HILLHOUSE, *President.*

THOS. G. HILLHOUSE AND L. C. ALEXANDER,
Solicitors for Defendant, The Metropolitan Trust Company of the City of New York.

(Endorsed, to wit:) No. 33, equity. U. S. circuit court, northern district of Texas. The Farmers' Loan and Trust Company *vs.* The Texas Central Railway Company *et al.* Answer of defendant, The Metropolitan Trust Company of the City of New York. T. G. Hillhouse and L. C. Alexander, solicitors for said defendant trust Co. Filed November 2, 1886. J. H. Finks, clerk.

200 Defendant, Metropolitan Trust Company, may have until October 30, 1886, to file within answer.
October 21, 1886.

TURNER, LEE & McCLURE,
Solicitors for Complainant.

201 *Waiver as to Answer of Metropolitan Trust Co. to Cross-Bill of Farmers' Loan & Trust Co. Filed Nov.* 13, 1886. *J. H. Finks, Clerk.*

U. S. Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS R. R. & S. Co.
v.
TEXAS CENTRAL R'Y Co.
} Original Bill.

FARMERS' LOAN & TRUST Co.
v.
SAME.
} Cross-Bill.

The time of def't, Metropolitan Trust Co. of C. of N. Y., is extended to & including November 5th, 1886, to answer cross-bill herein.

TURNER, LEE & McCLURE,
Att'ys for F. L. & T. Co.

202 *Agreement as to Evidence. Filed Febr'y* 21, 1887. *J. H. Finks, Clerk.*

RECEIVER'S OFFICE,
HOUSTON, TEXAS, *February 11th*, 1887.

Hon. W. P. Ballinger, Galveston, Texas.

DEAR SIR: In accordance with request contained in your favor of the 8th inst. I herewith enclose statement from Secretary Hall containing the information you desire.

Yours truly, C. DILLINGHAM, *Receiver.*

SECRETARY'S OFFICE,
HOUSTON, TEXAS, *Feb'y* 11, 1887.

Chas. Dillingham, Esq., receiver, etc.

DEAR SIR: The original subscribers to the stock of the "Texas Central R'y Co." were—

Morgan's La. & Tex. R. R. & S. S. Co., 750 shares; 75,000, paid in full, but no certificate yet issued.

Houston & Texas Central R'y Co., 500 shares; 50,000, paid in full, & certificate issued for same.

Houston & Texas Central R'y Co., 750 shares; 75,000, paid in full; no cert. issued.

Chas. A. Whitney,	10 shares;	1,000,	5 % paid	$50	No certificates issued.
A. C. Hutchinson,	10 shares;	1,000,	5 % paid	50	
203 R. J. Morgan,	10 " ;	1,000,	" "	50	
Chas. Fowler,	5 " ;	500,	" "	25	
G. Jordan,	5 shares;	500,	5 % paid	25	
E. W. Cave,	5 " ;	500,	" "	25	
A. S. Richardson,	5 " ;	500,	" "	25	
Chas. M. Whitney,	1 " ;	100,	" "	5	
Geo. Pandely,	1 " ;	100,	" "	5	
Jno. B. Richardson,	1 " ;	100,	" "	5	

Total subscribed stock, 2,053 sh's; $205,300; am't paid in, $200,265.00.

The only changes are that of the 1,250 shares owned by the H. & T. C. R'y Co.—

5 shares stand in the name of Chas. Dillingham.	No certificate issued.
5 " " " " " " Chas. Eversbade.	
5 " " " " " " D. Ripley.	
5 " " " " " " M. A. Westott.	

& 5 shares originally in name of Chas. Fowler are now in name of J. O. Car (no certificate).

All the bonds authorized by the mortgages to the Farmers' Loan & Trust Co., viz., $3,399,000, "firsts," have been issued, & all are now outstanding.

Respectfully yours, &c., H. HALL, *Sec't'y.*

Endorsed, to wit: It is agreed that the within statement may be used as evidence in the above cases. Baker, Botts & Baker, sol'rs for R'y Co. Farrar & Kruttschnitt, solicitors for M. L. & T.
204 R. R. & S. S. Co. Setting down cause for hearing. Filed April 4, 1887. J. H. Finks, clerk.

In the Circuit Court of the United States, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS STEAMSHIP & RAILROAD COMPANY
vs.
THE TEXAS CENTRAL RAILROAD CO. and Others } Original Bill.

and } No. 21.

THE FARMERS' LOAN & TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILROAD CO. and Others. } Cross-Bill.

Testimony having been closed in the above cases and the time for taking thereof having expired, the above cases, the original cause and cross-bill, are set for hearing on the first day of the April term of this court or as soon thereafter as the same can be heard.

BALLINGER, MOTT & TERRY,
Solicitors for The Farmers' Loan & Trust Company.

205 Report of testimony adduced before the special master at Houston March 26, 1887.
Filed April 11, 1887.

J. H. FINKS, *Clerk.*

Exhibits Attached to Report of Testimony Taken Before the Special Master at Houston March 26th, 1887.

MORGAN'S LA. & TEXAS R'R'D & S. S. CO.
vs.
THE TEXAS CENTRAL RAILWAY CO. } No. 21, Eq. Docket.

U. S. Circuit Court, at Waco.

Exhibit No. 1, Exhibit No. — annexed to bill of compl't.
Exhibit No. 2, Exhibit No. 2 attached to bill of compl't.
Exhibit No. 3, Exhibit No. 3 annexed to bill of compl't.
Exhibit No. 4, 16 notes & obligations attached.
EXHIBIT No. 5, resolution & receipt.
Exhibit No. 6, statement, earnings, & expenses, &c.

206 United States Circuit Court for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, The Farmers' Loan and Trust Company, Trustee, and The Metropolitan Trust Company, Trustee.	In Equity. No. 21.

United States Circuit Court for the Northern District of Texas, at Waco.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, Morgan's Louisiana and Texas Railroad and Steamship Company, and The Metropolitan Trust Company, Trustee.	On Cross-Bill in above Cause. No. —. In Equity.

Testimony taken by consent before John G. Winter, Esq., special master, in chancery sitting, at Houston, Texas, this twenty-sixth day of March, 1887.

Present: Messrs. Farrar & Kruttschnitt, for Morgan's Louis-
207 iana and Texas Railroad and Steamship Company; Judge W. P. Ballinger, for the Farmers' Loan and Trust Company; Messrs. Baker, Botts & Baker, for the Texas Central Railway Company; Judge L. C. Alexander, for the Metropolitan Trust Company.

The complainant offered in evidence—

1. Exhibit No. 1, annexed to the bill of complaint, being copy of deed of trust, dated 15th September, 1879, executed by the Texas Central Railway Company to the Farmers' Loan and Trust Company.

2. Exhibit No. 2, attached to the bill of complaint herein, being copy of deed of trust executed by the Texas Central Railway Company to the Farmers' Loan and Trust Company of date 16th May, 1881.

3. Exhibit No. 3, annexed to the bill of complaint, being copy of deed of trust executed by the Texas Central Railway Company to the Metropolitan Trust Company.

4. The sixteen notes mentioned in section eleven of the
208 bill of complaint, all dated Ross, Texas, November 1, 1884, payable on demand to the order of the Houston & Texas Central Railway Company and endorsed by the Houston & Texas Central Railway Company to the order of Morgan's Louisiana and Texas Railroad and Steamship Company, fifteen of said notes being for $50,000 each and one of said notes being for $11,992.04, said notes being numbered from one to sixteen, respectively.

Also to each of said notes is attached the obligation of the Texas Central Railway Company, dated Ross, Texas, December 1, 1884, binding itself to deliver certain general mortgage bonds therein mentioned, said additions to said notes being numbered respectively from one to sixteen *respectively* in the same manner as the notes; which said notes and attachments thereto the master has numbered "Complainant's Exhibit No. 4."

E. W. CAVE, called by the complainant and sworn, testified as follows:

Examined by Mr. FARRAR:

Q. What is your present occupation?

209 A. I am treasurer for the joint receivers of the Texas Central Railway Company.

Q. What connection did you have with the Texas Central Railway Company during the years 1880, '81, '82, '83, and '84?

A. I was treasurer of that company.

Q. And also treasurer of the Houston & Texas Central Railway Company?

A. I was also treasurer of that company during the same years.

Q. Look at these notes, numbered from one to sixteen, and the exhibits thereto annexed and state whether or not they are original and genuine, and whether or not they were executed according to the tenor thereof by the officials of that company. (The notes handed to the witness, being Exhibit No. 4.)

A. The notes placed in my hands, sixteen in number, with certificate attached to each, were executed by the Texas Central Railway Company, signed by J. Waldo, vice-president, and H. Hall, secretary.

Q. Do you know what the Houston & Texas Central Railway Company did with these notes after it received them? They

210 appear on the back to be endorsed to Morgan's Louisiana & Texas Railroad and Steamship Company.

A. These notes were executed by the Texas Central Railway Company and delivered to the Houston & Texas Central Railway Company, and were afterwards hypothecated and pledged to the Morgan's Louisiana and Texas Railroad and Steamship Company in accordance with resolution of the board of directors of the Houston & Texas Central Railway Company.

Q. Have you in your possession a copy of that resolution, together with the receipt of the Morgan's Louisiana and Texas Railroad and Steamship Company for these securities?

A. I have.

Q. Produce it, please.

A. (Producing paper.) This is a certified copy of the resolution, certified by the secretary of the company.

Q. What about the receipt annexed to it; is the receipt the original?

A. It is a receipt for delivery of certain obligations signed by John B. Richardson, secretary of Morgan's Louisiana and Texas

Railroad and Steamship Company, under date of December 15, 1884.

211 The complainant offered in connection with the testimony of this witness, marked "Complainant's Exhibit No. 5," the resolution and receipt aforesaid. It is agreed that the original receipt annexed to Exhibit No. 5 shall be withdrawn and a copy thereof, certified to by the witness, be substituted in its place.

Q. Do you know for what purpose those notes were given by the Texas Central Railway Company to the Houston & Texas Central Railway Company?

A. They were issued in settlement of the indebtedness of the Texas Central Railway Company to the Houston & Texas Central Railway Company.

Q. How did that indebtedness arise?

A. It arose for cash advances and payments made by the Houston & Texas Central Railway Company for the benefit of the Texas Central Railway Company.

Q. Payments for what purpose?

A. Moneys advanced to the Texas Central Railway Company in connection with the operation of its road.

212 Q. (Exhibiting paper to witness.) I ask you to look at this paper, which purports to be a statement of the gross revenues, operating expenses, taxes, and interest charges of the Texas Central Railway Company from the time that it commenced operations, covering the years 1880, '81, '82, '83, and up to September 30, 1884, and ask you to state what you know about the facts which therein appear, of your own knowledge.

A. From my general knowledge and recollection of the affairs of the Texas Central Railway Company this represents the payments made for the various accounts named therein, without being satisfied that the figures are as shown on the books, but in round amounts are as within my knowledge and recollection, representing the gross earnings, operating expenses, taxes, and interest on bonded debt.

Q. Do you, as treasurer of the Texas Central Railway Company, know whether the interest charges were paid for the year 1880?

A. All interest charges of the Texas Central Railway Com-
213 pany were paid up to the time when it defaulted on its interest.

Q. When did it default on its interest?

A. It defaulted on its interest in 1885; about —, 1885.

Q. Prior to that default the interest charges were all paid?

A. The interest charges were all paid; coupons paid. I recognize the statement before me as prepared by Mr. Hall, secretary of the company.

Q. At what date was the account between the Houston & Texas Central Railway Company and the Texas Central Railway Company adjusted and closed?

A. About the last of October, 1884, my recollection is.

Q. What would have been the condition of the Texas Central

Railway Company if the advances and payments which those notes represent had not been made?

A. I don't think the road could have been carried on.

Q. Why?

A. Because the amount of gross earnings would have left a deficit upon its operating expenses and fixed charges—taxes—that
214 would have compelled it to have practically stopped.

Q. Was there any year during the years 1880, '81, '82, '83, and up to September, 1884, when that company earned enough to pay its operating expenses and fixed charges—I mean including in that taxes?

A. No, sir.

Q. How were these funds that were advanced by the Houston & Texas Central Railway Company to the Texas Central Railway Company used by that company?

A. They were used in paying its operating expenses, indebtedness accruing for material and supplies, for maintenance, and such things as had to be done to improve or keep the property up in proper condition, and there may have been some portion of it that was necessarily applied to the maintenance of its security.

Q. You mean by that the payment of interest on its bonds?

A. Some of that money necessarily for that, because whatever money was used by the company out of its own gross earnings from its general business for the payment of interest on its bonded
215 debt necessarily left a deficit in its operating expenses and maintenance which had to be covered by advances and money obtained.

Q. How much of the stock of the Texas Central Railway Company did the Houston & Texas Central Railway Company own during that period?

A. They owned about two-fifths of it.

Q. Do you know whether the mortgage bonds provided to be issued under this mortgage to the Metropolitan Trust Company were ever issued by said trust company and delivered to the Texas Central Railway Company or to the Houston & Texas Central Railway Company?

A. The bonds were in the course of delivery and all arrangements had been made to deliver them and obtained the signature of the trust company, trustee, when they unexpectedly made a demand for the recording of the mortgage in far distant counties, and in order to comply with this, the work of recording being in progress, delay occurred, and before this record was completed a receiver was appointed.

Q. How did the Houston & Texas Central Railway Com-
216 pany expect to obtain payment of these advances made to the Texas Central Railway Co. and payments made on its account?

A. What time do you refer to, Mr. Farrar?

Q. Well, during the years 1880, '81, 82, '83, and 1884.

A. They expected at that time—at least I, as far as my connection with the company is concerned—expected that the hoped-for improve-

ment of the business of the road would take place and would enable it to reimburse these advances.

Q. At the time that the receiver was appointed in this case for the Texas Central railway what was its financial condition?

A. Well, its earnings were practically less than its operating expenses, and it had no means to pay the indebtedness to the Houston & Texas Central Railway Co. for the advances made, and the mortgage to the Metropolitan Trust Company was executed and notes made and delivered in order to afford all the security for the payment of those advances that the company was then able to give.

217 Q. I mean to call your attention to its financial condition at the time the application was made to appoint a receiver in this cause. The Houston & Texas Central Railway Co. had several months prior to that time passed into the hands of a receiver. Now, I want to know what the financial condition of the Texas Central Railway Company was at the time the application was made in this case for a receiver.

A. Its finances were in a wretched condition. The company was without means, owed this large indebtedness, and a deficit constantly growing.

Q. What about its pay-rolls for the back months? How far back were they due?

A. Part of its pay-rolls for several months were unpaid.

Q. Do not the reports and applications of the receiver in this case show how far back they were unpaid?

A. They do.

Q. And what the amount of those pay-rolls were?

A. Yes, sir.

218 Q. Who were the officials during this period of the Houston & Texas Central Railway Company and who were the officials of the Texas Central Railway Company, and how was the Texas Central railway operated?

A. The officials of the Houston & Texas Central Railway Company and the Texas Central Railway Company were practically the same. At the time of the organization of the Texas Central Railway Company Charles A. Whitney was president of the Houston & Texas Central Railway Company and became president of the Texas Central Railway Company. G. Jordan was vice-president of the companies. After Mr. Whitney's death Mr. Hutchinson became president of both companies, and Mr. J. Waldo succeeded Col. Jordan as vice-president of both companies.

Q. Who was treasurer of both companies?

A. I was treasurer of both companies.

Q. Who was the auditor of both companies?

A. Mr. A. S. Richardson was secretary of the Houston & Texas Central Railway Company and secretary of the Texas Cen-

219 tral Railway Company until he retired, when Mr. Hall became secretary. There was no auditor; the secretary conducted the office, kept the books, and so on. Mr. Cameron was acting as auditor.

Q. Was any salary paid to the officials of the Texas Central Railway Company?

A. There was none. I never received any and no other officer—that is, none of the executive officers, to my knowledge.

Q. What was the reason of that? Was it on account of the revenues of the company, or why?

A. When the Texas Central Railway Company was organized it was practically organized in the interest of the Houston & Texas Central Railway Company and with a view of occupying the country then opened and building up a business for the Texas Central Railway Company, and which, it was believed, would contribute largely to the benefit of the Houston & Texas Central Railway Company, with which the Texas Central Railway Company was identified.

Q. Have you been the treasurer of the receivers of the
220 Texas Central Railway Co. since the filing of this bill to this time?

A. I have.

Q. What have been its receipts in relation to its operating expenses during that period?

A. The receipts about kept pace with the operating expenses and taxes, but it has been necessary to obtain some amounts by loans under authority of the court to sustain it, and at the present time the receipts are not equal to the absolute necessities of the road.

Q. What was the credit of the Texas Central Railway Company at the time this bill was filed, good or bad?

A. It had no credit. It was bad.

Q. What was its condition as to round-houses, repair shops, and matters appertaining to the construction and operation of the road?

A. It needed considerable improvements that it was totally impossible to make with its means.

Q. Did it have any repair shops or round-houses or appurtenances of that sort?

A. It had been unable to construct them.

221 Q. Where was the maintenance of its equipment kept up during this time and prior to the appointment of receivers of the Houston & Texas Central Railway Company?

A. The work was done at the shops of the Houston & Texas Central Railway Company.

Q. Do you, from your knowledge of the country through which the Texas Central railway runs, anticipate that it will always remain in this condition in which it had been since 1880?

A. I think the probabilities are that for a short time at least, even if the present drouth condition changes, the country through which the road passes will be so depressed that it would require some time to rally, but if good crop seasons come the road may hope, after some years, to considerably better its condition.

Q. Is the country through which that road runs developed to its full capacity, or is it a new and undeveloped country?

A. A large amount of the country is practically new and developed to its present extent largely by the construction and
222 operation of the road. At the time when the road was con-

structed the country into the centre of Bosque county had experienced good crops and was practically in a prosperous condition. Since the construction of the road bad seasons—bad crop seasons—have generally existed until within the past year upon a large portion of the line of the road between Morgan and Albany. Very many of the people have been in a state of destitution and have required the aid of the State to maintain them through this period. I believe that if this condition changes, and it rains, that the country will improve; but a large portion of it is now occupied by several roads in competition with the Texas Central railway, and this is to be considered as a factor in estimating the improvement of the business.

By the MASTER:

Q. (Referring to Exhibit No. 5.) This is an accurate copy of the resolutions from the books of the company?

A. Yes, sir; so certified by the secretary.

223 Leave is granted to withdraw the original receipt (Ex. 5), and also the resolution attached thereto, the witness to furnish copies to be filed with the master.

The MASTER:

Q. You spoke of the receivers appointed by the Texas Central railway. You mean the receivers now in charge of that property?

A. Yes, sir.

Q. You state the gross earnings show a deficit. Do you mean by that that the expenses, in relation to the gross earnings, were more or less than the gross earnings?

A. I mean that the outlays for operating expenses, taxes, and interest on the bonded debt showed a deficit—that is, that the gross earnings were less than the total of those amounts.

Cross-examined by Judge BALLINGER:

Q. You say the Houston & Texas Central Railway Company owned about two-fifths of the stock?

A. Yes, sir.

Q. How was the remainder of the stock owned?

224 A. The remainder of the stock was owned—the whole of the stock, my recollection is, about $130,000 at the start. The Houston & Texas Central Railway Company owned and had an abandoned right of way, which was an extension of its line northwest from Waco, the right to construct which had lapsed. The Houston & Texas Central Railway Company took $50,000 of the stock, Morgan's Louisiana and Texas Railroad and Steamship Company took $75,000 of the stock, and there was about $5,000, my recollection is, among outside parties, all of whom were connected, more or less, with the interests of both companies.

Q. All those outside parties, were they not officials of the Houston & Texas Central Railway Company?

A. Not all of them; no, sir. My recollection is there were several that were not.

Q. Can you state the stockholders?

A. I cannot state them exactly from memory.

Q. Well, as far as you can, will you state the other stockholders and the amount of their stock?

225 A. My recollection is—I think Charles M. Whitney and Richard S. Morgan were stockholders for small amounts.

Q. Whitney was president?

A. No; Charles M. Whitney was a son of the president. There may have been one or two others.

Q. Who were the directors in the Texas Central Railway Company—the officials and directors of the Houston & Texas Central Railway Company?

A. Yes, sir; they were mainly so.

Q. Is it not true that there was practically the same directory that there was of the Houston & Texas Central Railway Company?

A. Majority of directors were the same in both companies.

Q. And was not a majority interest of the Houston & Texas Central Railway Company and of Morgan's Louisiana & Texas Railroad and Steamship Co. owned by the same parties?

A. Yes, sir; Morgan's Louisiana & Texas Railroad & Steamship Co. owned a small majority of the stock of the Houston & Texas Central Railway Company.

Q. And they owned the entirety of the stock of the other company?

A. Of which?

226 Q. Did not Morgan own——

Mr. FARRAR: Morgan's Louisiana & Texas Railroad and Steamship Co. owned a majority of the stock of the Houston & Texas Central Railway Company.

Q. And they together owned three-fifths of the stock in this company?

A. About three-fifths.

Q. I want to know who owned the stock in the Morgan's Company?

A. I cannot answer that question.

Q. Well, don't you understand that Charles Morgan was the proprietor and the beneficial owner of Morgan's Louisiana Company?

A. Charles Morgan was understood to be the principal owner in that company.

Q. You say that this road was built in the interest of the Houston & Texas Central Railway Company?

A. Well, it was believed by those that were interested in the stock of the Houston & Texas Central Railway Company that it would be beneficial to it to construct this road—that is, that the business this road created, worked in harmony with this, would be ben-

227 eficial. I will state there has been a very great disappointment in regard to the results of the construction of this road and its business.

Q. Referring to the negotiation of bonds that were issued under

this mortgage to the Farmers' Loan and Trust Company, who negotiated the bonds?

A. They were negotiated by the president, Mr. Whitney.

Q. He was president of the Houston & Texas Central Railway Co.?

A. Yes, sir.

Q. Was the road entirely completed out of these bonds or were there advances made by the Houston & Texas Central Railway Co. to help build the road?

A. To the best of my recollection, the bonds—the amount received from the sale of the bonds—was sufficient, and the stock, to provide for the actual construction of the road; but after the road was commenced to be operated there was, as there most always is in newly-constructed roads, a considerable amount of work to be done.

Q. In order to complete it and put it in good order?

228 A. In order, as the saying is, to "get the road up." It is very seldom that a road that is newly constructed, when operation is commenced, that its condition is such as not to require any further work, and that is often a considerable charge upon its revenues.

Q. Well, where did it get the money to do that?

A. It commenced borrowing the money of the Houston & Texas Central Railway Company. These advances were made——

Q. From the beginning?

A. No; not entirely from the beginning. During the process of construction the proceeds of the sales of the bonds went into the construction of the road, but the road was operated, you may say, almost from the time when its operation commenced. It was operated and practically a part of the Houston & Texas Central railroad. The Houston & Texas Central Railway Company collected its revenues and accounts. The money was disbursed from those moneys that were collected, and only as the deficit arose and in-

229 creased those advances were made and had to be made by the Houston & Texas Central Railway Company, and if they had not been made the railroad could not have been run sometimes; it would have to face debts it could not pay. It was practically operated as a division of the Houston & Texas Central railroad. The officers of the Houston & Texas Central Railway Company acted as officers of the Texas Central Railway Company, and they received no salaries. Its revenues came in and went into accounts, and then those accounts went onto the books of the Texas Central Railway Co., where matters were not kept direct.

Q. Its revenues were received in the first place by the Houston & Texas Central Railway Co.?

A. Yes, sir; freight revenues—that is, earnings—went into the books of the Houston & Texas Central Railway Co.

Q. When it got behind in any way—payment of interest or for operating expenses or anything else—when it got in debt who determined what should be paid?

230 A. The executive officers of the Houston & Texas Central Railway Co. advanced the money. They were authorized to advance it, and the debt was paid—the money was paid over to the

Texas Central Railway Company—and its debts were paid and receipts taken, &c. As the Houston & Texas Central Railway Co. collected all its earnings, why, whenever it was short it naturally turned in and it received help, and that is the way this balance of seven hundred and sixty-one thousand—nearly seven hundred and sixty-two thousand dollars—arose.

Q. Well, that is the balance upon a running account commencing from its earliest operations down to that time?

A. That is the balance of running account commencing about from the time the road commenced to be operated as a road. I think that account was adjusted.

Q. Were there different statements of accounts from time to time made up?

231 A. I don't think that the account was closed, but as the officers of both companies at all times were familiar with both accounts—the account was at all times understood—within their knowledge, and when the settlement was made upon which these notes were issued the account was brought down to date, interest calculated by the auditor of the Houston & Texas Central Railway Company understood and acknowledgded, and a balance of interest struck, and the balance found to be, as stated, about $762,000.

Q. How was the account made up and how was interest computed? Were there rests from period to period annually, or how about that?

A. My recollection is that interest was computed on both sides. There was a continual running account.

Q. That is, interest on balances?

—. ——.

(By Mr. FARRAR:)

Q. That is, the interest was calculated on every credit item and every debit item and brought down?

A. Yes, sir; the balance of interest is the interest that was charged.

(By Judge BALLINGER:)

232 Q. This is what I want to know. This account was made up in 1884. Now, suppose, for instance, in 1880 there was a debit item and credit item, did you calculate interest on each from 1880 to 1884—four years' interest—or were there calculations made for periods and then balances struck?

A. I did not make the interest calculation. My recollection is ——

Q. Who paid the interest on the bonds? Who furnished the money to pay the interest on the bonds?

A. The Texas Central Railway Company when the Texas Central Railway Company had funds, balances, &c.

Q. Had any balance on its books?

A. Yes, sir. Why, it did not have to call on the Houston & Texas Central Railway Company for it, and whenever it did not have it, as in the matter of interest or as in other matters, whatever balance was needed was supplied, but the Texas Central Railway Co. paid

its own coupons. They were paid by John J. Cisco and Son in New York upon separate account. He was the fiscal agent.

Q. Of both roads?

233 A. Yes, sir; so understood and acknowledged.

Q. And he was the party that paid the coupons?

A. He paid the coupons after advertisement or notice was given. They were paid as usual.

Q. The accruing funds, the income of the Central Company, was there any special use of its own funds, of its own earnings, towards paying running expenses rather than interest, or towards paying interest rather than running expenses, or was that all a matter of running account?

A. It was all in one account, so far as the account of the Houston & Texas Central Railway Co. was concerned, and whether the advances were made for one purpose or another they were charged so much cash; but the Texas Central Railway Co., of course, took cognizance of what it was used for.

Q. So that whenever it was behindhand on its current indebtedness and needed money the Houston & Texas Central Railway Company paid it, and when it came to pay interest and did not

234 have funds the Houston & Texas Central Railway Co. paid it?

A. The Houston & Texas Central Railway Company let it have the money.

HORACE HALL, called by complainant and sworn, testified as follows:

Examined by Mr. FARRAR:

Q. What is your present position and occupation in connection with this matter?

A. Secretary of the Texas Central Railway Company.

Q. How long were you secretary of the Texas Central Railway Co.?

A. Since May, 1884.

Q. (Handing witness Exhibit No. 6.) Please look at this document and state whether or not it is a correct statement from the books of the Texas Central Railway Company.

A. It is.

Q. Made up by whom?

A. I made it up myself.

The complainant then offered in evidence complainant's Exhibit No. 6.

235 It is admitted that the Houston & Texas Central Railway Company was placed in the hands of Benjamin G. Clark and Charles Dillingham, receivers, on or about 23rd February, 1885, in suit No. 185 on the equity docket of the circuit court of and for the eastern district of Texas, at Galveston, in the cause styled "The Southern Development Company *versus* The Houston & Texas Central Railway Company," and that they remained in possession of

said property until the said bill was dismissed on demurrer to the bill at the May term, 1886, of said court, and until about July 10, 1886, at which time they delivered the said property to Nelson S. Easton, James Rintoul, and Charles Dillingham, joint receivers appointed at the suit of The Farmers' Loan & Trust Company and Easton and Rintoul, trustees, *versus* The Houston & Texas Central Railway Company.

The complainant offered in evidence the petitions of the
236 *petitions of the* receivers filed in this cause, the orders of the court thereon, the reports of the special master thereon, the orders of the court thereon, and generally the accounts of the receivers and the reports of the master thereon and the orders of the court thereon.

It is agreed that Messrs. Baker, Botts & Baker, general counsel of the Texas Central Railway Company, shall make up and hand to the master herein to be attached to this testimony a statement of the causes pending against the Texas Central Railway Company, together with the amounts claimed in said causes at the time the bill was filed in this suit.

It is agreed between all the counsel to this record that the testimony in this cause is now formally published and the taking of testimony herein is closed, and that the cause stands
237 for hearing at the April term of the court, at Waco.

JOHN G. WINTER,
Sp'c'l Master.

Co. No.	Plaintiff.	Cause of Action.	County.	Court.	When commenced.	Amount sued for.	Date of judgment.	Amount of judgment.	Remarks.
1257	J. T. Chaffin	Work & contract	Eastland	District	Nov. 8, '81	48,000 00			
1379	R. B. Matherson	Work & labor	"	"	Apr. 10, '82	3,000 00			
1515	John C. Roberts	Trespass to try title	"	"	Nov. 3, '82	10,000 00			
1572	M. Coguey	Injunction	"	"	" " "	"			
1605	Sarah C. Burnet	Personal injuries	Shackleford	"	Feb'y 7, '83	20,000 00			
1635	L. G. Morris	Dam. to freight (cattle)	"	County	M'ch 5, '83	732			
1666	T. L. Rowland	Personal injuries	Eastland	Dist	Apr. 19, '83	25,000		For R'y Co.	App'l'd to supreme court.
1699	J. N. B. Randall	Trespass to try title	McLennan	"	" " "	"			
1719	A. W. Childress	Killing 1 cow	Basque	Justice	July 9, '84	40 00	Aug. 26,'84	40 00	" " " "
1723	N. M. Key	Killing 1 mare	Eastland	"	July 13, '84	65 66	July 30,'83	60 00	" " county "
1856	L. G. Stewart	Personal injuries	"	District	Nov. 21, "	10,000			
1862	Virginia B. Caruthers	Killing husband	McLennan	"	Dec. 10, "	30,000			
1863	Eugene A. Talbert	Personal injuries	"	"	Dec. 10, "	20,000			
1882	Wm. Johnson	Personal injuries	Eastland	"	" 26, "	20,000			
1890	J. T. Edrington	Trespass to try title	Basque	"	July 14, '84	do.			
1892	R. B. Oscue	Killing horses & dam. to vehicle	"	"	July 17, '84	725	Aug. —,'84	240 00	App'l'd to sup. c't.
1899	C. H. Rose	Killing a hog & injuring 1 hog	Erath	Justice	" 26, "	15			
1967	A. S. Richardson	Services rendered	McLennan	District	May 3, "	14,500			
1980	T. W. Knight	Dam. freight	"	County	May 3, "	192 25			
2071	I. A. Gorner	Trespass to try title	"	District	" " "	"			
2139	T. H. Arnold	Damage to horse	Hill	Justice	Feb. 24, '85	19 00			

239 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from one (1) to one hundred and fifty (150), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

240 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1 to 150, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

241 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from one hundred and fifty-one (151) to three hundred (300), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't

242 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 151 to 300, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec't'y.*

243 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from three hundred and one (301) to four hundred and fifty (450), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

244 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 301 to 450, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec't'y.*

245 EXHIBIT 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from four hundred and fifty-one (451) to six hundred (600), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

246 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 451 to 600, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec't'y.*

247 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from six hundred and one (601) to seven hundred and fifty (750), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

248 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 601 to 750, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

249 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from seven hundred and fifty-one (751) to nine hundred (900), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

250 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 751 to 900, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'ty.*

251 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from nine hundred and one (901) to ten hundred and fifty (1050), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

252 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 901 to 1050, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

253 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from ten hundred and fifty-one (1051) to twelve hundred (1200), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

254 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1051 to 1200, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

255 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundered and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from twelve hundred and one (1201) to thirteen hundred and fifty (1350), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

256 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1201 to 1350, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

257 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from thirteen hundred and fifty-one (1351) to fifteen hundred (1500), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

258 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1351 to 1500, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

259 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given, or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from fifteen hundred and one (1501) to sixteen hundred and fifty (1650), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

260 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1501 to 1650, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

261 EXHIBIT No. 4.

$50,000. Ross, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from sixteen hundred and fifty-one (1651) to eighteen hundred (1800), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

262 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1651 to 1800, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'ty.*

263 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from eighteen hundred and one (1801) to nineteen hundred and fifty (1950), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

264 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1801 to 1950, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

265 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from nineteen hundred and fifty-one (1951) to twenty-one hundred (2100), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

266 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 1951 to 2100, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

267 EXHIBIT No. 4.

$50,000. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston and Texas Central Railway Company or order, at the office of the Houston and Texas Central Railway Company, Houston, Texas, fifty thousand dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security one hundred and fifty thousand dollars ($150,000) of the Texas Central Railway Company's general mortgage bonds, said bonds being numbered from twenty-one hundred and one (2101) to twenty-two hundred and fifty (2250), both inclusive, with coupons due May 1, 1885, hereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad and Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

268 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mor-gage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, one hundred and fifty bonds (150) of one thousand dollars each, numbers 2101 to 2250, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[L. S.] H. HALL, *Sec'y.*

269 EXHIBIT No. 4.

$11,992.04. ROSS, TEXAS, *November* 1, 1884.

On demand, and upon return of securities given or other security subsequently substituted, the Texas Central Railway Company promise to pay to the Houston & Texas Central Railway Company or order, at the office of the Houston & Texas Central Railway Company, Houston, Texas, eleven thousand nine hundred and ninety-two and $\frac{4}{100}$ dollars, for value received, with interest at six (6) per cent. per annum, having deposited with the Houston and Texas Central Railway Co. as collateral security thirty-six thousand dollars ($36,000) of the Texas Central Railway Company's general mortgage bonds, being numbered from twenty-two hundred and fifty-one (2251) to twenty-two hundred and eighty-six (2286), both inclusive, with coupons due May 1, 1885, thereto attached, with authority at any time or from time to time to sell the same or other security subsequently substituted, at the board of brokers or at public or private sale, at their option, on the non-performance of this promise and without further notice, applying the net proceeds to the payment of this note, including interest, and accounting to the Texas Central Railway Company for the surplus, if any. In case of deficiency the Texas Central Railway Company promise to pay to said Houston & Texas Central Railway Company the amount thereof forthwith, after such sale, with legal interest.

J. WALDO,
Vice-President.

H. HALL, *Secretary.*

(Endorsed, to wit:) Pay to Morgan's Louisiana & Texas Railroad & Steamship Co. or order. The Houston & Texas Central Railway Co., by J. Waldo, V. pres't.

270 OFFICE TEXAS CENTRAL RAILWAY CO.,
ROSS, TEXAS, *Dec.* 1*st*, 1884.

The Texas Central Railway Company hereby binds itself to deliver to the Houston and Texas Central Railway Co. or order the general mortgage bonds called for in the attached obligation so soon as executed and signed by the trustee, to wit, thirty-six bonds (36) of one thousand dollars each, numbers 2251 to 2286, inclusive, and upon delivery of said bonds as aforesaid this certificate is to be returned to this company.

J. WALDO,
Vice-President.

[SEAL.] H. HALL, *Sec'y.*

271 EXHIBIT No. 6.

Texas Central Railway Company.

Statement of Gross Earnings, Expenses of Operation, and Charges Against Income from Commencement of Operation to Sept. 30, 1884, Inclusive.

	Gross earnings	Operating expenses.	Taxes.	Interest on bonded debt.	Total charge against income.	Deficit.
To Dec. 31, 1880..	102,773 76	75,360 25	79 67	54,250 00	129,689 92	26,916 16
" " 1881..	247,707 02	115,426 83	3,663 24	140,875 00	259,965 07	12,198 05
" " 1882..	205,887 32	137,896 73	9,026 79	218,080 00	386,203 52	180,316 20
" " 1883..	290,262 45	248,310 73	13,440 32	237,930 00	499,681 05	209,418 60
" Sept. 30, 1884..	210,312 78	177,302 88	14,337 40	237,930 00	429,570 28	219,257 50
Total.....	$1,056,943 30	774,297 42	41,087 42	889,665 00	1,705,049 84	648,106 51
Interest other than on bonded debt.....						70,098 85
Total deficit						$718,205 36
						70,098 85
						648,106 51

272 EXHIBIT No. 5.

Whereas the Houston and Texas Central Railway Company is indebted to the Morgan's Louisiana and Texas Railroad and Steamship Company in a large amount, which said indebtedness is evidenced by the following-described obligations of this company:

Dec. 10th, 1881	160,276 53
June 15, 1882	150,000 00
Ap'l 28, 1883	85,000 00
June 29, 1883	225,000 00
Oct. 17, 1883	50,000 00
Nov. 20, 1883	50,000 00
" 21, 1883	100,000 00
Dec. 6, 1883	50,000 00
" 29, 1883	90,000 00
Jan. 17, 1884	50,000 00
M'ch 4, 1884	46,000 00
M'ch 31, 1884	200,000 00
Ap'l 30, 1884	115,000 00
May 12, 1884	40,000 00
" 25, 1884	30,037 50

Making a total of one million four hundred and forty-one thousand three hundred and fourteen $\frac{3}{100}$ dollars, together with unpaid interest due therein, some of which said obligations are secured by the pledge and hypothecation of four hundred and sixty-nine
273 general mortgage bonds of one thousand dollars each;

And whereas the Morgan's Louisiana and Texas Railroad and Steamship Company, at the request of this company and for its accommodation, has consented to release to this company the said general mortgage bonds and to accept other collateral security in

lieu thereof and as additional security for the said indebtedness heretofore recited, viz., $1,441,314.03:

Resolved, That, in consideration of the surrender to this company of four hundred and sixty-nine of the general mortgage bonds of this company now held as collateral security by Morgan's Louisiana and Texas Railroad and Steamship Company, and for further security, the executive officers of this company be, and they are hereby, authorized and instructed to pledge and hypothecate to the said railroad and steamship company the following notes, with the collateral security attached thereto, held and owned by this company, with authority at any time or from time to time to sell said bonds and notes or any security subsequently substituted at public or private sale on the non-performance of said obligations according to their tenor and effect.

274 Resolved, That upon the delivery of the said four hundred and sixty-nine general mortgage bonds to this company the treasurer be instructed to deliver to the said Morgan's Louisiana and Texas Railroad and Steamship — the aforesaid notes, with the collateral security attached thereto, and to this end the vice-president shall make the necessary endorsements and transfers, to wit, as follows:

1. Obligation of the Central Texas & Northwestern Railway Company to the Houston and Texas Central Railway Company, dated October 1st, 1884, payable on demand to the order of the Houston and Texas Central Railway Company, and endorsed by said company, with six per cent. interest from date until paid, for seventy-eight thousand nine hundred & sixty dollars, with the following collateral security attached thereto, viz., one hundred and eighty first-mortgage six per cent. bonds of the Central Texas & Northwestern Railway Company for one thousand dollars each, numbers one to one hundred & eighty, inclusive, with coupons due April 1st, 1885, and thereafter attached; total bonds, one hundred & eighty thousand dollars.

275 2. The following sixteen obligations, executed by the Texas Central Railway Company, payable on demand to the order of the Houston and Texas Central Railway Company, and endorsed by said company dated November 1st, 1884, with six per cent. interest from date until paid, being fifteen obligations for fifty thousand dollars each and one obligation for eleven thousand nine hundred and ninety-two $\frac{4}{100}$ dollars, making a total of seven hundred & sixty-one thousand nine hundred & ninety-two $\frac{4}{100}$ dollars, the said obligations having for collateral security attached thereto twenty-two hundred and eighty-six general mortgage bonds of the Texas Central Railway Company of one thousand dollars each ($2,286,000), with coupons due May 1, 1885, and thereafter, the said obligations and collateral security attached thereto being numbered and designated as follows:

No. 1 secured by bonds numbers	1	to	150, inclusive.
No. 2 secured by bonds numbers	150	to	300, inclusive.
No. 3 secured by bonds numbers	301	to	450, inclusive.

No. 4 secured by bonds numbered 450 to 600, inclusive.
" 5 " " " 601 to 750, "
" 6 " " " 771 to 900, "
" 7 " " " 901 to 1050, "
" 8 " " " 1051 to 1200, "
" 9 " " " 1201 to 1350, "
No. 10 secured by bonds numbers 1351 to 1500, inclusive.
276 " 11 " " " 1501 to 1650, "
" 12 " " " 1651 to 1800, "
No. 13 secured by bonds numbers 1801 to 1950, inclusive.
" 14 " " " 1951 to 2100, "
" 15 " " " 2101 to 2250, "
" 16 " " " 2251 to 2286, "

The foregoing is a correct copy of a resolution adopted by the board of directors of the Houston & Texas Central Railway Company at a special meeting held at the company's office on the first day of December, A. D. 1884.

(Signed) H. HALL, *Secretary.*

277 Received of E. W. Cave, treasurer Houston and Texas Central Railway Company, the collateral security named in the foregoing resolution and as described therein, to wit, 15 obligations of the Texas Central Railway Company executed to the Houston & Texas Central Railway Company for $50,000 each, with certificates for $150,000 general mortgage bonds of Texas Central Railway Company attached thereto as collateral security until delivery of bonds.

1. Obligation of the Texas Central Railway Company executed to the Houston & Texas Central Railway Company for $11,992.04, with certificates for $36,000 general mortgage bonds of said company attached thereto as collateral security until delivery of bonds; total amount of notes, $761,992.04; total bonds for collateral, $2,286,000, Nos. 1 to 2286, inclusive, $1,000 each.

Obligation of the Central Texas & Northwestern Railway Company executed to the Houston & Texas Central Railway Company for $78,960, with $180,000 first-mortgage bonds of Central Texas & Northwestern Railway Company attached thereto as collateral
278 security bonds Nos. 1 to 180, inclusive, for $1,000 each.

For the purposes and subject to the terms and conditions named in said resolutions.

(Signed) JNO. B. RICHARDSON,
Sec'y Morgan's L. & T. R. R. & S. S. C.

Dec. 15, '84.

I certify the foregoing to be a true copy of original on file in the office of treasurer of the joint receivers Houston and Texas Central Railway Company and used in my testimony before the master.
26th March, 1887.

E. W. CAVE.

In making the foregoing certificates, having read the stenographer's report of my testimony, I state respecting the following portion of the same, viz:

"Q. Is it not true that there was practically the same directory that there was of the Houston & Texas Central Railway Company? A. Majority of directors were the same in both companies."

I understood Judge Ballinger's question to refer to the
279 time of the organization of the Texas Central Railway Company and answered accordingly to the best of my recollection.

E. W. CAVE.

280 *Petition of Receivers for Order to Settle, Adjust Claims, &c.*

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.*	In Equity. No. 21.

To the honorable the judges of said court:

Your petitioners, Benjamin G. Clarke and Charles Dillingham, joint receivers of said Texas Central Railway Company, respectfully show—

That in the operation of said railway claims do constantly arise and will continue to arise against said receivers as such for lost and damaged freights, for damages for stock killed by said railway, for personal injuries, as well as demands for money or damages arising from other causes in the operation of said road, and petitioners believe and so aver that it will facilitate the business of said company and lessen expenses, without injury to rights of any parties interested, to grant the order here now immediately prayed for, and therefore pray that this court do grant and issue an order herein authorizing and directing said receivers to audit, determine,
281 and, in their discretion, pay to claimants any demands or claims for the injury to or killing of stock by said railway which have accrued or may hereafter accrue during said receivership, except such as have been already referred to the special master or may be before him under any order of reference: also all claims and demands for lost freight or damage to freight which have accrued or may accrue during said receivership, and all other claims and demands against said company which have accrued or may accrue during said receivership, arising *ex contractu*, which may not have been referred or be pending before the special master; and petitioners pray that said order direct that all other claims and demands except those above enumerated be filed with and presented to the special master in chancery, and that when any of said demands and claims which said receivers are authorized to audit and pay shall by them be rejected they shall likewise be filed with and

presented to said special master in chancery for examination and report in due course; and as in duty bound, &c.

CHARLES DILLINGHAM,
B. G. CLARKE,
By C. DILLINGHAM,
Attorney-in-Fact Joint Receivers.

Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* The Texas Central Railway Company *et al.* Petition of receivers for order to settle and adjust claims, &c. Filed November 24, 1885. J. H. Finks, clerk."

282 *Report of Special Master Relative to the Transfer and Delivery of the Property of the Defendant Company to the Joint Receivers.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Chancery.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

To the honorable the judges of said court:

In compliance with the order herein of the honorable circuit judge, of date April 4, 1885, on that day the defendant, The Texas Central Railway Company, surrendered the management and control of all of its property to Messrs. Benjamin G. Clarke and Charles Dillingham, joint receivers under said order appointed, and afterwards, on the 6th day of April, 1885, the said company transferred and delivered to said receivers all and singular its property as in said order designated and required.

283 Under my directions an inventory has been made by the proper officials of said company, under oath, of the property of the defendant, so far as the same could be ascertained, transferred and delivered to the receivers as aforesaid, which inventory is filed with this report.

JOHN G. WINTER,
Master pro Hac Vice.

Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Master's report as to inventory of property turned over to the receivers. Filed June 19, 1885. J. H. Finks, clerk."

284 *Petition of Receivers for Order Authorizing Them to Secure Sureties on Cost and Appeal Bonds, etc., and Order.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY.
No. 21. In Equity.

In the Circuit Court of the United States for the Northern District of Texas.

To the honorable the judges of said court:

Your petitioners, Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully show unto your honors—

That under the order appointing them as receivers in this cause and for the purpose of collecting the land notes of said defendant company which have come into their hands as receivers and for other purposes they have instituted and will have to institute in future suits in the courts of the State of Texas.

That the statutes of said State provide that before issuing process in any case the clerk will require the plaintiff to file
285 security for the costs of court; that in a number of causes already filed the clerks have called upon your petitioners to give bond and security for such costs, and that such calls are likely to be made in the future.

That under the order of appointment aforesaid your petitioners, being required to prosecute suits already instituted against the Texas Central Railway Company, are called upon to give bonds for costs in appeal cases where they are required to take appeals to protect the interest of the company.

That it is impossible to get persons to go on petitioners' bonds for costs in such cases unless they are able to give the sureties upon such bonds some security for liability in case judgment should go against them.

Wherefore they pray that your honors may issue an order declaring that all persons who sign bonds as security for costs in suits instituted, prosecuted, or defended by your petitioners under the order appointing them receivers in this cause shall have a lien upon the revenues of the property in the hands of your petitioners, and that in case their receivership is terminated before the liability upon said bonds is settled an amount sufficient to cover said securities shall be retained in the registry of the court to secure them from loss.

FARRAR & KRUTTSCHNITT, *Solicitors.*

Order.

On considering the foregoing petition it is ordered that the receivers be authorized to execute cost bonds in all cases prosecuted or defended by them, and that such bonds be considered obligations

of the receivers to be protected by the court in any decrees that may be herein entered.

June 13th, 1885.

DON A. PARDEE, *Judge.*

285½ Endorsed, to wit: "No. 21. In equity. U. S. circuit court, northern district of Texas. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* The Texas Central Railway Company. Petition of receivers as to sureties on cost bonds, etc. Filed June 15, 1885. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors."

286 *Petition of Receivers to Pay Discharged Employees.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Chancery.

In the United States Circuit Court in and for the Fifth Circuit and Northern District of Texas, at Waco.

To the honorable the judges of said court:

Benjamin G. Clarke and Charles Dillingham, joint receivers in this cause, duly appointed, as appears by the records herein, with respect showeth—

That defendant company is indebted to a number of persons by it employed in the labor and operation of said railway during the months of February and March, 1885, who have since been discharged from such service, and such wages so due are a prior lien upon the property of said company under the statutes of the State of Texas in such cases made and provided.

287 That such persons are dependent upon their wages for the means of daily support, and a delay in paying them their dues is a cause of distress and suffering among them, not only in depriving them of the means of payment for the necessaries of life, but in delaying them and in many instances rendering it impossible for them to seek employment and work at other places.

That the fact that they have been discharged renders it difficult and in many instances impossible for them to purchase supplies on credit, as otherwise they might do.

Petitioner shows that the wages are due to various and different persons in small amounts, and that in the aggregate such dues by said company amount to about the sum of fifteen hundred dollars.

Petitioners pray for an order of court authorizing them to immediately pay the class of persons mentioned from funds in their hands, or for such other order as to the court may seem proper in the premises.

And petitioners will ever pray, etc.

Per pro B. G. CLARKE,
C. DILLINGHAM,
CHARLES DILLINGHAM,
Joint Receivers.

Order.

Considering the foregoing petition, it is ordered that the receivers do at once pay out of any funds that may have come to their hands as earnings of said Texas Central railway the wages due the said discharged employees for services in operating said railway, whether said services were rendered prior or subsequent to the possession of the receivers.

DON A. PARDEE, *Judge.*

Waco, April 22d, 1885.

288 Endorsed, to wit: "No. 21. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Receiver's petition to pay discharged employees. Filed April 22, 1885. J. H. Finks, clerk."

289 *Petition of Receivers to Make Certain Improvements at Walnut Springs.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Chancery.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

To the honorable the judges of said court:

Benjamin G. Clarke and Charles Dillingham, joint receivers in this cause, duly appointed, as by the records therein is made to appear, with respect showeth—

That before the appointment of said receivers—that is to say, in the year 1884—the defendant company, having no machine shops, round-houses, or other facilities necessary to the proper care and protection of its operative departments, and experiencing
290 great difficulty and expense in the care and repair and protection of its locomotives, cars, etc., by reason of the insufficiency at other points of water supply for use in such matters, and being the owner of valuable lands at a point on the line of said road in the county of Bosque known as Walnut Springs, began the erection at said Walnut Springs of a round-house, shops, and other necessary buildings and necessary side tracks, etc., for the purpose of establishing the headquarters of said company at said point.

That said company, before the appointment of your petitioners as receivers as aforesaid, had begun such works of improvement and had expended in and about such work the sum of nine thousand four hundred and seven dollars.

That the round-house and other portions of such work are in a tate of partial completion, and unless finished will soon becomes worthless and ruined, and the money already expended thereon will be lost.

That said Walnut Springs is the most suitable point on the line of said railway for the establishment of said works and quarters, and has a full and everlasting supply of water suitable for all railroad purposes and necessary thereto.

That said company now has no facilities for the care, repair, and protection of its locomotives, cars, etc., and that the completion of said works is necessary to the proper care and protection of the motive property of defendant company in your petitioners' hands, and that without the completion thereof it will be necessary to send all equipments appertaining to defendant's motive department to some point on some other road where proper machine shops, etc., can be found.

Petitioners show that it will require the further sum of
291 fifteen thousand dollars to complete the said works at Walnut Springs.

That petitioners have not the funds now on hand nor will they have for some time a sufficient fund from the earnings of said road to complete said works.

Petitioners pray for an order from your honorable court authorizing them to proceed with and to complete said works at Walnut Springs, as contemplated by said defendant company, and to enable petitioners to complete the same they further pray for an order authorizing them to borrow the sum of fifteen thousand dollars for the period of one year and to execute their obligations or debentures in such form as the court may direct, the same to bear interest not exceeding seven per cent. per annum and the interest to be paid semi-annually.

Petitioners show that defendant company own valuable lands at said Walnut Springs; that said point is now being rapidly settled as a town, and that said lands are valuable as "town lots" in said town.

That said lands passed into the hands of your petitioners as receivers as aforesaid.

Petitioners pray as hereinbefore they have done, and further that they be authorized to sell said lands in town lots and to make and execute deeds therefor, and that such sales be authorized to be made partly for cash and partly on time, as to petitioners may seem best for the interest of the estate, the deferred payments, if any, to be secured by vendor's lien on the lands so sold, and that the proceeds of such sale be held by your petitioners as a fund to be used in the payment of said debentures or loan so far as such sales and collections thereon may have been accomplished at the date of the maturity of said debentures or loan; and petitioners further pray that
292 said loan and debentures issued therefor may be declared and deemed to be a first lien on the property of said company, and for such other and further order as to the court may seem in the premises to be proper.

And petitioners will ever pray, etc.

Per pro B. G. CLARKE,
C. DILLINGHAM,
CHARLES DILLINGHAM,
Joint Receivers.

Order.

The within petition is referred to the special master to take evidence and report upon the several matters embraced therein, particularly as to the necessity for the said improvements, their present condition, the loss or damage that may result from failure to complete the same, and the amount of money necessary to complete the said works. Notice by letter of the hearing will be given to the trustee of the mortgage bondholders and to complainant in this cause.

DON A. PARDEE, *Judge.*

In open court April 22d, 1885.

Endorsed, to wit: "No. 21. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Receivers' petition to make certain improvements at Walnut Springs, and order. Filed April 22, 1885. J. H. Finks, clerk."

293 *Petition of Receivers and Order to Borrow Money to Pay Wages Due Employees for January, February, and March Pay-Rolls.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Equity.

In the Circuit Court of the United States for the Northern District of Texas.

Petition and order to borrow money to pay wages due employees for January, February, and March pay-rolls.

To the honorable the judges of the United States circuit court for the fifth circuit and northern district of Texas:

The joint petition of Benjamin G. Clarke and of Charles Dillingham, who have been duly appointed and who have qualified
294 as receivers of the defendant company herein under an order of this honorable court heretofore entered in the above-entitled cause, respectfully represents—

That your petitioners, under an order of this honorable court, have taken possession of the property over which they were appointed receivers by order of this honorable court herein, and that on taking such possession they discovered that the pay-rolls of the employees of said defendant company for the months of January, February, and March, 1885, remain unpaid, amounting in all to the sum of twenty-two thousand three hundred and twenty-four dollars and seventy-one cents, an itemized statement of which accompanies this petition, marked Exhibit B; but they find no money with which to pay for labor and services heretofore rendered and now due as herein stated, and the same cannot be paid except by securing a

loan for that purpose; that the wages due to said employees are, by the statute of the State of Texas, a prior lien to all others upon the railroad and all its equipments upon which said employees have been employed; all of which will appear from an act of the Legislature of the State of Texas approved February 18, 1879, being chapter 12 of the laws of said year.

That unless immediate provision is made to pay said pay-rolls the employees of said company will become dissatisfied and the efficiency of the railway of said defendant company be seriously impaired.

That all of the claims hereinabove set forth constitute liens upon said property paramount to the claims of any of the mortgage creditors upon the same or any other lien creditors whomsoever, and that it is to the vital interest of all parties interested in said railway that said pay-rolls be immediately paid.

295 That all and singular the allegations aforesaid will fully appear from the affidavit of the treasurer of said defendant company, herewith filed and made a part of this petition and marked "Exhibit A."

That petitioners desire to be authorized to borrow the sum of twenty-two thousand three hundred and twenty-four dollars and seventy-one cents for the purpose aforesaid.

Wherefore your petitioners pray that they be authorized and directed to borrow for — days and at such rate of interest as your petitioners may be able to obtain, but not exceeding eight per cent., the sum of twenty-two thousand three hundred and twenty-four dollars and seventy-one cents for the purpose of paying said pay-rolls, and to execute to the person or persons advancing such sum or sums of money the receivers' obligation or obligations expressing the amounts advanced and the terms upon which the same shall be advanced.

And petitioners further pray that this honorable court do render an order in the premises specifically authorizing them to effect said loans on the terms aforesaid, and in said order specifically fixing the terms of said loans; and petitioners further pray for all further and equitable orders in the premises, etc.

Per pro B. G. CLARKE,
C. DILLINGHAM.
CHARLES DILLINGHAM.

296 "EXHIBIT A."

STATE OF TEXAS, }
County of Harris. }

Personally came before me, the undersigned authority, E. W. Cave, who, being duly sworn, deposes and says that up to and including the third day of April, A. D. 1885, he was the treasurer of the Texas Central Railway Company and had been such treasurer for many years; that he is now the treasurer of the joint receivers, Benjamin G. Clarke and Charles Dillingham, appointed by the circuit court of the United States in the matter of Morgan's Louisi-

ana & Texas Railroad and Steamship Company *versus* The Texas Central Railway Company, numbered 21 on the chancery docket of said court for the northern district of Texas; that there is due and unpaid upon the pay-rolls of said Texas Central Railway Company, in his possession, for the month of January, 1885, the sum of two thousand two hundred and forty-seven dollars and fifty-five cents, and for the month of February, 1885, the sum of seven thousand six hundred and thirty-four dollars and twenty cents, and for the month of March, 1885, the sum of twelve thousand four hundred and forty-two dollars and ninety-six cents; that the persons upon said pay-rolls for January, February, and March, 1885, to whom said sums are due are persons who have performed labor and services in the operating of said railway during said months, and that all of the above data and statements are of record on the books of the said Texas Central Railway Company and on the books of said receivers.

E. W. CAVE.

Sworn to and subscribed before me this 23d day of April, 1885.
DON A. PARDEE, *Judge.*

297 Texas Central Railway Company.

Amounts Due from the Texas Central Railway Company on the 4th Day of April, 1885.

For labor and services on the Texas Central Railway—

For the month of January, 1885	$2,247 55
For the month of February, 1885	7,634 20
For the month of March, 1885	12,442 96
	$22,324 71

Correct.

H. HALL, *Auditor.*

April 23, 1885.

Order.

On reading and considering the foregoing petition, and having examined the affidavits and evidence in support thereof, and being satisfied from the evidence submitted that the sum of twenty-two thousand three hundred and twenty-four and $\frac{70}{100}$ dollars is due by the said Texas Central railroad to the employees as named in the rolls attached to this petition for operating and repairing said railroad company's property during the months of January, February, and March, just prior to the appointment and possession of the receivers; that the said sum so due is a first lien on the railway and rolling stock in the hands of said receivers prior to all mortgage debts and other demands, and that it is to the interest of the property that such deferred debts and liens should be paid as soon as possible, it is ordered that the said receivers be authorized and di-

rected to borrow a sufficient sum not exceeding said amount of $22,324.71 and pay said debts and liens said sum to be borrowed for a period of forty days at not exceeding eight per cent.
298 per annum interest; and to secure the payment of the said sum so borrowed said receivers are authorized to give in such form as the lender or lenders may require their obligation as receivers for the same, and to pledge that the same shall be paid out of the proceeds of the debentures to be authorized to meet the general past due expenses of said railroad company.

And it is ordered that such sum or sums as shall be borrowed under this order shall be held to be a prior lien on the said railroad and its property equal in rank to the laborers' liens paid with the said sum so borrowed.

DON A. PARDEE, *Judge.*

Houston, Texas, April 23d, 1885.

Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Petition and order to borrow money to pay wages due employees for January, February, and March pay-rolls. Filed April 25, 1885. J. H. Finks, clerk."

299 *Petition of Receivers for Designation of a Depositary.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY.
} No. 21, Equity.

United States Circuit Court in and for the Fifth Circuit and Northern District of Texas, at Waco.

To the honorable the judges of the United States circuit court in and for the fifth judicial circuit and northern district of Texas:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully shows:

That petitioners ask the court to designate, after reference to the special master, a bank or banker in Houston, Texas, as a depositary of their funds.

Wherefore they pray for such an order of court or for such other order as the court may deem proper in the premises.

FARRAR & KRUTTSCHNITT,
Solicitors for Receivers.

300 *Order.*

It is ordered that the receivers be authorized to select as their depositary any of the banks designated in the order rendered in a similar petition presented by them in No. 185, Ch. D. of the eastern

district of Texas, styled Southern Development Company *vs.* Houston & Texas Central Railway Company.

DON A. PARDEE, *Judge.*

May 16th, 1885.

(Endorsed, to wit:) "No. 21, equity. U. S. circuit court, northern district of Texas, at Waco. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* Texas Central Railway Company. Petition of receivers for designation of depositary and order. Filed May 18, 1885. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors for petitioners."

301 *Petition of Receivers to Print Orders, etc.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY *vs.* TEXAS CENTRAL RAILWAY COMPANY.	In Equity. No. 21.

United States Circuit Court in and for the Fifth Circuit and Northern District of Texas, at Waco.

To the honorable the judges of the United States circuit court for the fifth circuit and northern district of Texas:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, with respect showeth—

That there are so many persons interested in this cause that it would promote the convenience of this court, the officers of the court, and all parties concerned if all petitions, orders, references, master's reports, and opinions heretofore rendered and hereafter to be rendered in the progress of this cause in the matter of this receivership were printed.

Wherefore they pray that the clerk of this honorable court
302 be ordered to print one hundred copies of all such petitions, orders, references, master's reports, and opinions for the use of the judges and the respective parties in interest, to be charged as costs in the case.

FARRAR & KRUTTSCHNITT,
Solicitors for Receivers.

Order.

The clerk will cause to be printed one hundred copies of all petitions, orders, references, opinions, and reports in this cause for the use of the court and parties in interest, the printing to be on paper uniform in size with bill already printed.

DON A. PARDEE, *Judge.*

May 16th, 1885.

Endorsed, to wit: "No. 21. U. S. circuit court, northern district of Texas, at Waco. In equity. Morgan's La. & T. R. R. and S. S. Co. *vs.* Texas Central Railway Co. Petition of receivers to print orders, etc., and order. Filed May 18, 1885. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors for petitioners."

303 *Petition of Receivers to Allow Retainer of Attorneys and General Counsel.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Equity.

United States Circuit Court in and for the Fifth Circuit and Northern District of Texas, at Waco.

To the honorable the judges of the United States circuit court in and for the fifth judicial circuit and northern district of Texas:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully shows—

That the order appointing them directs them to prosecute and defend all litigation against the defendant company, and to employ counsel with leave of court; that there is considerable litigation now pending in various parts of the State of Texas against said company, and that petitioners deem it advisable to retain Messrs. Baker,
304 Botts & Baker, of Houston, Texas, as their attorneys, said attorneys having been employed by the said railway company under regular contracts for many years past.

And petitioners further show that they have retained Messrs. Farrar & Kruttschnitt as their general counsel to advise them as to their rights and duties, and to have charge and supervision of the legal business of the receivership.

Wherefore petitioners pray that an order be entered herein allowing them to retain the above-named attorneys, and allowing them to retain Messrs. Farrar & Kruttschnitt as their general counsel as aforesaid.

CHARLES DILLINGHAM,
B. G. CLARKE,
By C. DILLINGHAM,
Attorney-in-Fact, Joint Petitioners.

Order.

The receivers are authorized to retain Messrs. Baker, Botts & Baker as their attorneys and Messrs. Farrar & Kruttschnitt as their general counsel, as in the above petition prayed for.

DON A. PARDEE, *Judge.*

May 16th, 1885.

Endorsed, to wit: "No. 21, equity. U. S. circuit court, northern district of Texas, at Waco. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* Texas Central Railway Company. Petition of receivers to be allowed to retain counsel and attorneys, and order. Filed May 18, 1885. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors for receivers."

305 *Petition of Receivers for General Order as to Damage Claims.*

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21, Equity.

United States Circuit Court in and for the Fifth Circuit and Northern District of Texas, at Waco.

To the honorable the judges of the United States circuit court in and for the fifth circuit and northern district of Texas:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully represents—

That claims against the receivers for stock-killing, personal injuries, damage to freight, and damages of every nature will constantly arise, and petitioners believe that it will facilitate the business of the company and lessen legal expenses if the court should issue a general order herein directing all such claims exceed-
306 ing fifty dollars to be filed with the special master in chancery, and directing him to hear and report upon the same in due course, and allow petitioners to examine and adjust all claims which do not exceed the sum of fifty dollars each, and as to which they may be advised that they are liable.

Wherefore petitioners pray that such order may issue or such other order in the premises as to the court may seem proper.

FARRAR & KRUTTSCHNITT,
Solicitors for Receivers.

Order.

The foregoing petition considered, it is ordered that all claims for damages for every kind of alleged tort that may arise against the receivers growing out of their operation of the Texas Central railway and exceeding fifty dollars in amount shall be filed with and presented to the special master in chancery, who shall examine and report thereon in due course. The master is directed to give reasonable public notice of this order, and is authorized to hold sessions for the examination of claims at such points as he may designate; and it is further ordered that the receivers be, and they are hereby, authorized to examine, adjust, and compromise claims that are brought against them arising from the operation of said railway and not exceeding fifty dollars in amount: Provided further, That

all such adjusted and compromised claims shall be reported to the court for its advice before payment: And provided further, That in cases where the receivers reject the claims presented to them and not exceeding fifty dollars in amount the same may be filed with and presented to the special master in chancery, who shall ex-
307 amine and report thereon in due course in like manner as is hereinbefore ordered in cases exceeding fifty dollars in amount.

DON A. PARDEE, *Judge.*

May 16th, 1885.

Endorsed, to wit: No. 21. U. S. circuit court, northern district of Texas. In equity. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* The Texas Central Railroad Company. Petition for general order as to damage claims and order. Filed May 18, 1885. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors for petitioners."

308 *Petition of Receivers for Leave to Issue Receivers' Certificates to Pay for Supplies, Wages of Employees, Mechanics' Liens, Traffic Balances, etc.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Equity.

In the Circuit Court of the United States for the Northern District of Texas.

To the honorable the judges of the United States circuit court for the fifth circuit and northern district of Texas:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, with respect showeth:

That at the time when they took possession of the prop-
309 erty of defendant under a former order of this court there was and is now due to the employees of said company for services and labor in the various departments thereof, as shown by the rolls and vouchers on file in the offices of the treasurer and auditor of the company and by estimates made by the said auditor and treasurer of amounts for which vouchers have not yet been prepared and all of which debts accrued within the six months prior to the appointment of your petitioners as receivers, an amount in excess of $24,000, and that there was also due at the time aforesaid for traffic balances to connecting lines, fuel, supplies, and costs of repairs to rolling stock and other small items of current expenditures an amount of $5,000 or thereabouts and all of which became due six months prior to the appointment of your petitioners as receivers.

That in order that the said property may be preserved, and that the business of the railway may be properly conducted and not suffer detriment in the hands of your petitioners, it will be necessary that the foregoing accounts be paid.

That the incoming rents and profits derived and received by petitioners are not now sufficient, and, as your petitioners are informed and believe, the same will not for the next twelve months be more than sufficient, to pay the necessary expenses to be by them incurred in the operation of the road and which must of necessity be paid out of the revenues of said road to accrue in petitioners' hands.

That, for the purpose of paying the amounts so due for labor as aforesaid, your petitioners have heretofore, under an order of this honorable court, effected a temporary loan of $22,324.71, but that your petitioners desire and consider it to the interest of said
310 property to issue receivers' certificates for an amount of $20,000 or thereabouts to pay said temporary loan and said indebtedness aforesaid.

That all of said claims aforesaid for labor constitute first liens upon said property, under the laws of the State of Texas, paramount to all mortgage obligations upon the property of said defendant.

That petitioners annex hereto a detailed statement of said indebtedness, sworn to by the secretary and by the treasurer of said company, marked Exhibit A, which is made part hereof.

Wherefore petitioners pray that they be authorized and directed to issue debentures in such denominations as they may see fit for the purpose of borrowing or raising the money necessary to pay off and discharge the foregoing debts and accounts and said foregoing temporary loan, such debentures or certificates to be negotiable in form, to bear not to exceed seven per cent. per annum interest from their date until paid, to be made payable one year from date, interest payable semi-annually, and that they be disposed of at not less than their par value and proceeds used by petitioners in the payment of the hereinabove-described indebtedness; that your petitioners be directed to pay said debentures and certificates, and that the same be made and constituted a lien upon the property of every nature and description of said railway company, and that the earnings of said railway, after deducting operating expenses and the expenses of receivership, be pledged for the payment of the principal and interest of said debentures or certificates according to their tenor or effect.

Your petitioners further pray that your honors may direct
311 the form of such debentures or certificates, and for such other orders in the premises as to the court may seem proper.

FARRAR & KRUTTSCHNITT,
Solicitors for Petitioners.

STATE OF LOUISIANA, }
Parish of Orleans. }

Charles Dillingham, being first duly sworn, deposes and says that the several matters and things set forth in the above and foregoing petition are true, to the best of his knowledge and belief.

CHARLES DILLINGHAM.

Sworn to and subscribed before me this 28th day of April, 1885.

[L. S.] J. G. EUSTIS,
Notary Public.

Order.

The above petition is referred to the special master, with instructions to notify defendants of time of hearing and to examine and report upon the facts of said petition speedily.

May 16th, 1885.

DON A. PARDEE, *Judge.*

312 EXHIBIT A.

Texas Central Railway Company.

Sundry Amounts Unpaid April 4, 1885, for Pay-Rolls, Services on Pay Vouchers and Expenses Connected with Same, Traffic Balances, etc.

Pay-roll balances for services unpaid December, 1884	$77 40
" " " " January, 1885	2,247 55
" " " " February, 1885	7,634 20
" " " " March, 1885	12,442 96
Pay-roll and pay vouchers for services, estimated *for* April 1 to April 4, 1885	1,881 75
Pay vouchers for services, expenses connected with services, official fees, etc.	1,353 93
Traffic balances due connecting lines April 4, 1885	3,676 03
Total	29,313 82

The undersigned, H. Hall, secretary, and E. W. Cave, treasurer, of the Texas Central Railway Company, certify that from the pay-rolls, vouchers, and data of the said company the indebtedness of the Texas Central Railway Company for the purposes and time stated is shown to be due, the estimate for the four days of April, 1885, on N. E. Division, etc., being approximate, and we also state that in our belief it will not be practicable to pay the same out of the earnings of the next six months, but that said earnings will be required during that time for operating expenses and proper maintenance.

H. HALL,
Sec'y T. C. R'y Co.
E. W. CAVE,
Treasurer T. C. R'y Co.

313 Sworn to and subscribed before me this 24th day of April, 1885.

Witness my hand and official seal, at office, in Houston, Texas.

A. K. TAYLOR,
[L. S.] *U. S. Commissioner, East. Dist. of Texas.*

Endorsed, to wit: "No. 21. U. S. circuit court, northern district of Texas, at Waco. In equity. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Filed May 18, 1885. J. H. Finks, clerk. Petition for authority to borrow $30,000 and issue receivers' certificates for same. Farrar & Kruttschnitt, counsel and solicitors for petitioners."

314 Report of special master upon the petition of receivers, of date April 22, 1885, relative to the completion of the round-house, machine shops, etc., at Walnut Springs.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY	No. 21.
vs.	In Chancery.
THE TEXAS CENTRAL RAILWAY COMPANY.	

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

To the honorable the judges of said court:

The reference under order of this court, of date April 22, 1885 upon the petition of the receivers that they be authorized to
315 proceed with the construction of and to complete the round-house, machine shops, etc., of defendant railway company at Walnut Springs, in Bosque county, Texas, and for that purpose to borrow fifteen thousand dollars and to issue their obligations therefor, came on to be heard at my office, in the city of Houston, on the 8th day of June, 1885, and there then appeared Messrs. Farrar & Kruttschnitt, as solicitors for complainant, the receivers, and the Metropolitan Trust Company of New York, and Messrs. Ballinger, Mott & Terry, as solicitors for the Farmers' Loan and Trust Company, and Messrs. Baker, Botts & Baker, as solicitors for the defendant railway company.

Upon the examination of witnesses at said hearing I find, under the evidence then adduced, that said railway company, now under the care and management of said receivers, has no machine shops, round-house, or other facilities to it belonging for the necessary repair or protection of its locomotives and cars. I find that it is desirable and proper, for the more economical and convenient management and operation of the property of said railway company in the hands of the receivers, that suitable provision should be made on the line of said railway for the repair and protection of the cars and locomotives belonging to said company. I find that before the appointment of the receivers in this cause, and while the property of said company was yet under its own control and management, said company had begun the erection and construction of a round-house and machine shops at a point on the line of said railway in the county of Bosque known as Walnut Springs for the purpose of there repairing its locomotives and cars, and that it had expended about the sum of eight thousand dollars on such work, and had partially completed the necessary buildings for the purposes intended. I find that said buildings in their present state of
316 partial completion and interior exposure will rapidly decay and become unfit for use, and that unless completed the money already expended thereon will practically be lost.

I find that at Walnut Springs there is an adequate supply of everlasting water in every respect suitable for the uses of machine and

car shops, the "washing" of engines, and other necessary railroad purposes, and is a proper place on the line of said road for divisional termini.

I find that it will require the expenditure of the additional sum of fifteen thousand nine hundred and ninety-two $\frac{88}{100}$ dollars to fully complete and equip the works already begun, and that the sum named will be sufficient to so complete said works and equip the same for the purposes intended. I find that the receivers have not now and will not probably have before next spring a sufficient income from the property in their hands over and above the sums that will be necessary to defray the current expenses of the operation and maintenance of such property to complete said works at Walnut Springs.

I find at said point on said railway is located the town of "Walnut Springs," and that defendant company is the owner of valuable property in said town, exclusive of that desired for its own use—that is to say, of 39 lots and 29.02 acres of land, of the estimated aggregate value of three thousand dollars—and that the receivers now have in their possession a number of promissory notes given by purchasers in part payment of lots in said town heretofore sold by said company, and that said notes amount in the aggregate to seventy-three hundred and five $\frac{13}{100}$ dollars, of which notes sixteen hundred and forty-nine $\frac{80}{100}$ dollars are now past due; nine-
317 teen hundred and sixty-one $\frac{53}{100}$ dollars will become due during the present year; twenty-eight hundred and fifty-seven $\frac{80}{100}$ dollars will become due in 1886, and seven hundred and five $\frac{50}{100}$ dollars will become due in 1887, and one hundred and thirty $\frac{50}{100}$ dollars will become due in 1888.

I find that the value of the lots and unparceled land belonging to said company cannot be realized if sold for cash alone, but that it will be necessary to sell the same for part payments in cash and credits of one and two and in some instances three years for the balance of the purchase-money.

From these findings I conclude that it is necessary to the preservation of the buildings already partly erected that they be finished, and it is desirable and proper, for the more convenient and economical management and operation of the business of the company by the receivers, that the whole work be completed as originally designed, and that it will require the sum of fifteen thousand nine hundred and ninety-two $\frac{88}{100}$ dollars so to complete the same.

I therefore respectfully recommend that the receivers be authorized to so complete said works within the limit of expenditure set forth in the foregoing findings of fact, and that they be authorized for that purpose to borrow the sum of sixteen thousand dollars, and to issue therefor their obligations, payable twelve months after date of same, and bearing not exceeding seven per cent. per annum interest, and that such obligations be decreed to be a lien upon the property in the hands of the receivers.

I further recommend that the receivers be authorized to sell the lots and unparceled land at Walnut Springs upon such terms as by them may be deemed most advantageous, and to execute deeds to

purchasers of such said property as they may so sell, reserv-
318 ing in such deeds the vendor's lien for any part of unpaid purchase-money, and that they be directed to reserve as a special fund the proceeds of such sales, as well as the collections from the notes now in their hands for property heretofore sold at Walnut Springs, and to apply the same to the payment at maturity *pro tanto* of the obligations issued by them to pay for the completion of said works, and that they likewise so reserve and apply the proceeds of any sales of said property that may come into their hands after the maturity of said obligations to the repayment of any sum that may have been taken from the general fund in their hands for the payment of said obligations.

JOHN G. WINTER,
Special Master, etc.

Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Master's report on receivers' petition to make certain improvements at Walnut Springs. Filed June 11, 1885. J. H. Finks, clerk."

319 *Report of Special Master upon Petition of Receivers for Leave to Issue Certificates, etc.*

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Chancery.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

To the honorable the judges of said court:

The reference under order of date May 16, 1885, of the petition of the receivers for leave to issue receivers' certificates to pay for supplies, wages of employees, mechanics' liens, traffic balances, etc., came on to be heard at my office, in the city of Houston, on the 8th day of June, 1885, at which time and place there appeared before me upon such hearing Messrs. Farrar & Kruttschnitt, as solicitors for complainant, the receivers, and the Metropolitan Trust Company of New York, and Messrs. Ballinger, Mott & Terry, as solicitors for the Farmers' Loan and Trust Company, and Messrs. Baker, Fotts & Baker, as solicitors for the defendant railway company.

320 From the evidence adduced before me upon said hearing I find that the defendant company was, on the 4th day of April, 1885, indebted to various persons for services rendered said company during the months of January, February, and March, 1885, and the first four days of April, 1885, in the operation of said railway and in the construction of buildings on the line of said road in the sum of thirteen hundred and ninety-six $\frac{1}{100}$ dollars, as per statement and approved vouchers offered and received in evidence.

I find that said defendant is also indebted to Stephen Turner in in the sum of twenty dollars for services rendered in the month of July, 1884, in the survey of land involved in a threatened suit for damages against defendant and still undetermined, for which reason, the services of said Turner being further necessary, said item was not presented at the time of the performance of the work.

I find that said company is indebted to employees, as appears by the pay-rolls of said company, in the sum of sixteen hundred and sixty-eight $\frac{6}{100}$ dollars for services rendered from the 1st to the 4th of April, inclusive (1885).

I find that said company is indebted to various railway companies, as per statement offered and received in evidence, for traffic balances, being money received by defendant for such other companies, and accrued between the 23d day of February and the 4th day of April, 1885, in the sum of forty-two hundred and forty-one $\frac{21}{100}$ dollars.

I find that at the time the property of the defendant company passed into the hands of the receivers it had no means wherewith to discharge its debts for labor performed in the operation of said road, and accrued immediately before the appointment of said receivers, and that in that emergency the receivers, by authority of an order
321 of the honorable circuit judge of date April 23, 1885, borrowed for the period of forty days the sum of twenty-two thousand three hundred and twenty-four $\frac{71}{100}$ dollars, for the purpose of discharging said debts for labor accrued prior to the 1st day of April, 1885, and that the money so borrowed has not yet been repaid.

I find that the receivers have not now, and probably will not have, from the income of the property in their hands, before the expiration of twelve months, a sufficient sum over and above that which will be required for the operation and maintenance of said railway to pay the items of indebtedness hereinbefore enumerated.

I find that said several items of indebtedness aggregate the sum of twenty-nine thousand six hundred and sixty-seven $\frac{98}{100}$ dollars.

From the foregoing findings of facts I conclude that the receivers should be authorized to pay said indebtedness, and that for that purpose they be authorized to borrow the sum of thirty thousand dollars and to issue therefor their certificates of indebtedness, payable twelve months after date of same such certificates, to bear interest not exceeding seven per cent. per annum, and that such certificates or other evidence of debt so issued be decreed to be a first lien upon all the property of the defendant railway company in the hands of said receivers.

JOHN G. WINTER,
Special Master, etc.

Endorsed, to wit: "No. 21, equity. Morgan's Louisiana & Texas Railroad and Steamship Company *vs.* Texas Central Railway Company. Master's report on receivers' petition to issue certifi-
322 cates to pay employees, etc., amounting to $30,000. Filed June 12, 1885. J. H. Finks, clerk."

323 *Petition of Receivers as to Signature of Deeds, etc.*

In the United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } In Equity. No. 21.

To the honorable judges of said court—

Your petitioners, Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully show:

That in April, 1885, your petitioner, Benjamin G. Clarke, gave his associate, Charles Dillingham, a general power of attorney to act for him in the administration of the affairs of the receivership of the Texas Central Railway Company and in all administrative acts, duties, and orders to sign his name and exercise his authority, as appears by the original of said power hereto annexed and marked Document A.

That the said petitioner, Benjamin G. Clark, did also, on the 11th day of January, 1886, in the city of New York, execute a power of attorney to his associate, Charles Dillingham, giving him full
324 power and authority to sign his name as joint receiver in said cause to all deeds of sale to town lots and other real property that have heretofore been ordered to be sold or that may hereafter be ordered to by the court in said cause, as appears by the said original power hereto annexed and marked Document B.

Wherefore your petitioners pray that these powers of attorney be put of record, and that in order to facilitate the execution of deeds by the joint receivers as aforesaid your honors may issue an order directing that the signature of Charles Dillingham for the joint receivers to all deeds as aforesaid shall be taken and considered and held as the signature of both of said receivers.

FARRAR & KRUTTSCHNITT, *Solicitors.*

Order.

Considering the foregoing petition and the accompanying powers of attorney, it is ordered that said powers of attorney be put of record in this cause, and that the signature of Charles Dillingham for the joint receivers to all acts and deeds to be made under orders in this cause shall be taken and held as the signature of both of said joint receivers.

DON A. PARDEE, *Judge.*

January 21st, 1886.

Endorsed, to wit: "No. 21. In Equity. United States circuit court, northern district of Texas, at Waco. Morgan's La. and Tex. R. R. & S. S. Co. *vs.* The Texas Central R'w'y Co. Farrar & Krutt-

schnitt, attorneys for complainants. Filed Jan'y 23, 1886. J. H. Finks, cl'k U. S. C. c't, by F. O. Rogers, deputy."

325 NEW YORK, *April*, 1885.

Know all men by these presents that during my absence from the State of Texas Mr. Charles Dillingham, my associate receiver of the Texas Central Railway Co., has full power to act for me in the administration of the affairs of the said receivership and in all administrative acts, duties, and orders to sign my name and to exercise my authority.

B. G. CLARKE.

Attest: J. F. C. GROW.

The above and foregoing paper is endorsed as follows, to wit: "No. 21. In equity. United States circuit court, northern dist. of Texas, at Waco. Morgan's La. & Texas Railroad and Steamship Co. *vs.* The Texas Central R'y Co. *et als.* Document A annexed to petition of receivers as to signature of deeds, etc. Filed January 23, 1886. J. H. Finks, clerk U. S. circuit court, by F. O. Rogers, deputy."

STATE OF NEW YORK, } *ss:*
City and County of New York, }

This instrument in writing witnesseth that Charles Dillingham, Esq., who has been appointed joint receiver with the undersigned of all the property, rights, franchises, etc., of the Texas Central Railway Company in suit No. 21 of the equity docket of the circuit court of the United States for the northern district of Texas, at Waco, in the matter styled "Morgan's Louisiana and Texas Railroad and Steamship Company *vs.* The Texas Central Railway Company and others," is hereby given full power and authority to sign my name as joint receiver in said cause to all deeds of
326 sale of town lots and other real property that have heretofore been ordered to be sold by the court in said cause.

In testimony whereof I have signed this instrument on the eleventh day of Jan'y, 1886, in the presence of Theo. Sturges and Walter Hauxhurst, competent witnesses.

B. G. CLARKE,
Joint Receiver.

THEO. STURGES.
WALTER HAUXHURST.

The above and foregoing paper is endorsed, to wit: "No. 21. In equity. United States circuit c't, northern dist. of Texas, at Waco. Morgan's La. & Texas R'y and Steamship Co. *vs.* Texas Central R'y Co. *et als.* Document B annexed to petition of receivers as to signature of deeds, etc. Filed January 23rd, 1886. J. H. Finks, clerk circuit c't U. S. F. O. Rogers, deputy."

327 *Petition of Receivers as to Town Lots.*

In the United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } In Equity. No. 21.

To the honorable the judges of said court:

Your petitioners, Benjamin G. Clarke and Charles Dillingham, joint receivers herein, with due respect showeth:

That among the property which has passed into the possession and control of your petitioners herein, as joint receivers, are certain town lots and certain sites, organized and unorganized, along the line of said railway in the counties of Bosque, Comanche, Erath, Shackleford, Ellis, Eastland, Hamilton, Hill, Hunt, and Kaufman, more particularly described and detailed in the document hereto annexed and marked "Exhibit A."

That the said Texas Central railway is a new road, the towns along its line are new towns which were laid off by the company, and that the business and earnings of the said company depend almost entirely upon the growth and development of these towns; that constant application is made to your petitioners by *bona*
328 *fide* settlers and residents to purchase these town lots in the various towns aforesaid along the line of said railroad company, and that your petitioners have been compelled to answer that they had no authority or power to dispose of them.

That your petitioners believe that it is absolutely essential to the growth and development of these towns that these vacant lots should be brought into market and disposed of, and that your petitioners believe the sale of said town lots, thereby promoting the growth and development of these towns, will materially increase the earnings of the property in their possession.

That your petitioners are informed that there is some controversy between the complainant and the defendants as to whether these town lots and tracts are included in any of the mortgages upon the said property, a controversy which need not interfere with the disposition of this property in the manner and form requested.

Wherefore the premises and the annexed consent of the parties being considered, your petitioners pray that they may be ordered, directed, and empowered to sell from time to time as application is made to them by *bona fide* purchasers and settlers the various town lots and town sites in the counties aforesaid, as set forth in detail in the annexed exhibit, and that they be ordered and directed to hold the proceeds of such sales in a special fund apart from the other receipts and revenues of the company coming into their hands to abide the final decree of the court, or such further orders as the court may render in the premises, and that your petitioners may be

authorized and empowered to sign the deeds of said sales, and that the deeds so executed and signed shall convey title to the purchasers, free from all incumbrances of every kind and nature that
329 may now exist thereon, as the act and deed of the Texas Central Railway Company.

FARRAR & KRUTTSCHNITT, *Solicitors.*

We consent to the issuance of the order above asked for.

FARRAR & KRUTTSCHNITT,
Sol'rs Complainants.
TURNER, LEE & McCLURE,
Sol'rs for F. L. & T. Cp.
THOMAS G. HILLHIND,
Solicitor for Met. Trust Co.
BAKER, BOTTS & BAKER,
Sol'rs for H & T. C. R'y Co.

Order.

The matter of the foregoing petition and the consent for the parties to this cause being considered, it is ordered that the receivers be directed and empowered to sell from time to time as application is made to them by *bona fide* purchasers and settlers the various town lots and town sites as set forth in detail in the exhibit annexed to and made part of said petition. It is further ordered that the receivers be directed to hold the proceeds of said sales in a special fund apart from other receipts and revenues of the company coming into their hands, to abide the final decree of the court, or such further order as the court may render in the premises, and that said receivers be authorized and empowered to sign the deeds of said sales, and that the deeds so executed and signed shall convey title to the purchasers, free from all encumbrances of every kind and nature that may now exist thereon, as the act and deed of the Texas Central Railway Company.

DON A. PARDEE, *Judge.*

Jan'y 21st, 1886.

330 Endorsed, to wit: "No. 21. In equity. United States circuit court, northern dist. of Texas, at Waco. Morgan's La. & Texas R. R. & S. S. Co. *vs.* Texas Central Railway Co. *et als.* Petition of receivers as to town lots, etc. Filed Jan'y 23, 1886. J. H. Finks, clerk U. S. circuit c't, by F. O. Rogers, deputy. Farrar & Kruttschnitt, attorneys for receivers."

Real Estate Other than Town Lots Owned by the Texas Central R'y Co., and its Valuation.

County.	Acres.	Value.
Hill	213	$4,260 00
Bosque	119	375 00
Erath	2,200	4,600 00
Eastland	3,497	9,870 00
Shackelford	474	1,998 00
Northeastern Branch.		
Ellis	310	3,664 00
Kaufman	37	1,650 00
Hunt		
Total	6,850	$26,417 00

NOTE.—Most of the above lands are parts of town tracts not yet laid off into lots.

331 *Real Estate.*

Town lots owned by the Texas Central R'y Co. and their valuation.

County.	Town.	Lots.	Out lots.	Value.
Bosque	Morgan	168	7	$3,600 00
"	Iredell	225	11	2,400 00
Comanche	DeLeon	232	32	10,770 00
Eastland	Cisco	453	12	12,370 00
Erath	Dublin	43	--	1,500 00
"	Alexander	253	12	4,300 00
Hamilton	Hico	129	12	2,700 00
Hill	Whitney	316	15	6,740 00
Hunt	Roberts	246	--	1,500 00
Kaufman	Terrel	61	--	3,300 00
"	Scurry	288	--	1,500 00
Shackelford	Albany			
	(R. R. add'n)	207	6	4,740 00
(Old town and Jacob's add.)		84	6	1,970 00
Total		2,705	113	$57,970 00

(Endorsed, to wit:) "No. 21. In equity. U. S. circuit court, northern dist. of Texas, at Waco. Morgan's Louisiana & Texas Railway Co. *vs.* Texas Central Railway Co. *et als.* Exhibit annexed to petition of receivers as to sale of town lots. Filed January 23rd, 1886. J. H. Finks, cl'k U. S. circuit court. F. O. Rogers, deputy."

332 *Petition of Receivers as to Payment of Taxes and Order thereon.*

In the United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } In Equity. No. 21.

To the honorable the judges of said court:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully shows—

That taxes due to the State of Texas, and also to the various counties and municipalities in said State for the year 1885, are now due, and petitioners are informed and believe that if said taxes be not paid before the first day of March proximo, the amount of the same will be increased by costs and penalties to the extent of from fifteen to twenty per cent. on the amount thereof; that under and by virtue of the laws of the State of Texas said taxes constitute a first lien upon the property in the possession of your receivers; that petitioners desire the advice and authority of this honorable court in the premises and desire to obtain from your honors an order

333 authorizing and directing them to pay said taxes, as well as any and all other taxes which may become due to the said State of Texas or to any of the counties or municipalities thereof during the possession of your receivers herein.

Wherefore your petitioners pray that your honors do render an order in the premises authorizing and instructing them to pay said taxes now due to the State of Texas and the various counties and municipalities thereof, and further authorizing and instructing your receivers to pay any and all taxes which may now be due or which may hereafter become due to said State of Texas or the various counties or municipalities thereof during the period when your petitioners shall have possession of the property of the defendant railway company.

And petitioners further pray for all further and equitable orders in the premises.

FARRAR & KRUTTSCHNITT,
Solicitors for Receivers.

Order.

The court considering the above petition of the receivers in the above-entitled cause, it is ordered that the said receivers be, and

they are hereby, authorized and instructed to pay any and all taxes due and to become due to the State of Texas or to any county or municipality thereof during the period that they have been or shall hereafter be in possession of the property of the defendant railway—that is to say, the taxes for the year 1885 and other years subsequent thereto during the pendency of the receivership herein.

DON A. PARDEE, *Judge.*

Feb'y 5th, 1886.

334 Endorsed, to wit: "No. 21. In equity. U. S. circuit court, northern dist. of Texas. Morgan's La. & T. R. R. & S. S. Co. *vs.* Texas Central Railway Co. & *als.* Petition of receivers for advice as to payment of taxes and order thereon. Farrar & Kruttschnitt, solicitors for receivers. Filed Febr'y 8th, 1886. J. H. Finks, clerk, by F. O. Rogers, dep't."

335 *Petition of Receivers for Order as to Passing of Accounts, etc.*

In the United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
} No. 21. In Equity.

To the honorable the judges of the circuit court of the United States in and for the fifth judicial circuit and northern district of Texas:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully shows—

That your receivers are desirous to pass their accounts before the special master in this cause at limited intervals to be fixed by your honors.

Whereupon petitioners pray that your honors do render an order herein directing them to pass their accounts forthwith before the special master herein and hereafter at intervals of every
336 three months before the said master, on due notice and at such time and place as said master may appoint.

Petitioners further pray for all further and necessary orders in the premises.

FARRAR & KRUTTSCHNITT,
Solicitors for Receivers.

Order.

The court considering the foregoing petition, it is ordered that the receivers in the above cause do forthwith pass their accounts before the special master herein on due notice, and that they do hereafter pass their accounts every three months before said master, on due notice and at such time and place as said master may direct.

DON A. PARDEE, *Judge.*

March 13th, 1886.

Endorsed, to wit: "No. 21. U. S. circuit court, northern district of Texas, at Waco. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Central R'y Co. Petition of receivers for order as to passing of accounts, etc. Filed March 15, 1886. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors for receivers."

337 *Petition of Receivers for Issue of $25,000 Receivers' Certificates and Acceptance of Service.*

In the United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
No. 21. In Equity.

To the honorable the judges of said court:

The petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, respectfully shows that heretofore, to wit, on or about the 20th day of June, 1885, your petitioners were authorized to borrow thirty thousand dollars on twelve months' time to pay for back indebtedness prior to the receivership, and by another dated the same day your petitioners were authorized to borrow sixteen thousand dollars on twelve months' time to complete certain improvements at Walnut Springs.

That in accordance with said orders your petitioners borrowed and expended said sums; that during the autumn of the
338 year 1885 the business of said railway company improved, as is usually the case at said season, the earnings increased, and on the 19th of November, your petitioners having money sufficient on hand and being desirous of saving interest, paid the thirty thousand dollars so borrowed by them, and on the 19th of December paid the sixteen thousand dollars so borrowed by them and due on the Walnut Springs property; that the busy season is now over, and petitioners find that in order to pay promptly taxes, operating expenses, and traffic balances arising under their management and not anterior to the receivership, it will be necessary for them to borrow the sum of twenty-five thousand dollars for eight months, at the expiration of which time petitioners hope and believe that the earnings of said railway company will enable them to repay the advances so made; that had your petitioners not anticipated the payment of said amounts so borrowed by them in the interests of economy they would in all probability have been able to pay the greater part of said indebtedness at maturity, as a part of the loans effected by them were not made until 15th August, 1885, and hence were not payable until 15th August, 1886; but that petitioners, by their action in the premises, have saved about one thousand dollars in interest, and have thus, to the best of their ability, protected the interest of the property in their custody.

The premises considered, the petitioners pray that they be authorized and directed to issue debentures in such denominations as they may see fit for the purpose of borrowing or raising the money necessary to pay any deficit in taxes, operating expenses, and traffic balances which may accrue against them during their management of the property of the defendant railway company herein, such debentures or certificates not to exceed the sum of twenty-five thou-
339 sand dollars, to be negotiable in form, to bear not to exceed seven per cent. per annum interest from date until paid, to be made payable eight months after date, and that they be disposed of at not less than par, and the proceeds used by petitioners in payment of any indebtedness of the hereinabove-described class which may accrue; that petitioners be directed to pay said debentures and certificates, and that the same be made and constituted a lien upon the property of every nature and description whatsoever of said defendant railway company, and that the earnings of said railway, after deducting operating expenses and the expenses of the receivership, be pledged for the payment of the principal and interest of said debentures or certificates according to their tenor or effect. Petitioners further pray that your honors will direct the form of said debentures or certificates, and for all further and general relief and necessary orders in the premises.

FARRAR & KRUTTSCHNITT,
Solicitors for Receivers.

Charles Dillingham, Esq., being sworn, deposes and says that all the allegations in the foregoing petition contained are true.

CHARLES DILLINGHAM.

Sworn to and subscribed before me this 17th day of April, 1886.

J. C. KIDD,
[SEAL.] *Notary Public, County of Harris, Texas.*

Order.

The court, considering the matter of the above petition ask-
340 ing leave to be allowed to issue debentures to an amount not exceeding twenty-five thousand dollars, and the said debentures being intended to take the place of other debentures heretofore authorized by order of this honorable court, and taken up before maturity by the receivers in the proper discharge of their duty in order to save interest upon said debentures, it is now therefore ordered that the receivers herein be, and they are hereby, authorized and empowered to issue certificates or debentures not to exceed twenty-five thousand dollars in amount, and each of said debentures to be for such amount as said receivers may deem proper, to bear a rate of interest not exceeding seven per cent. per annum, to fall due in eight months after date; and said receivers are authorized to sell said certificates at not less than par, the proceeds thereof to be applied for the purpose of paying taxes, operating expenses, and

traffic balances which are or may become due by said receivers in excess of the net earnings of said railway company. It is further ordered that said certificates and obligations when issued shall become, and they are hereby declared to be, a lien upon the road-bed, rolling stock, depots, and all other property of said railway company, including the net earnings thereof, after deducting the expenses of this receivership and the operation of the road; such lien to be prior to all other liens. It is further ordered that the said certificates or debentures be substantially in the form following, to wit:

"Office receivers of Texas Central Railway Company; Benjamin G. Clark and Charles Dillingham, joint receivers.

"Ross, Texas, —— —, 188–.

"Eight months after date, for value received, we, Benjamin G. Clarke and Charles Dillingham, as joint receivers of the property of the Texas Central railway, do, under and by virtue of the power in us vested by an order of the circuit court of the United States for the north-
341 ern district of Texas, at Waco, made on the — day of April, 1886, in a certain cause wherein Morgan's Louisiana & Texas Railroad and Steamship Company is complainant and the Texas Central Railway Company and others are defendants, No. 21 of the equity docket, hereby promise to pay at the —— bank, in the city of New York, to bearer hereof, — dollars, with interest from date until paid at the rate of — per cent. per annum. This obligation is one of a series amounting to twenty-five thousand dollars, authorized by said court to be made by us as receivers, and is, together with others of the same series, made and declared to be a lien upon the road-bed, rolling stock, depots, and all other properties of said railway company of every nature and description wheresoever situated, and also a lien upon whatsoever residue of the earnings, incomes, and profits of said property that there may be after deducting the operating expenses, cost of repairs, and the expenses of our receivership, and such lien to be prior to all other liens."

DON A. PARDEE, *Judge.*

April 19th, 1886.

United States Circuit Court, Northern District of Texas, at Waco.

Morgan's Louisiana and Texas Railroad and Steamship Company *vs.* The Texas Central Railway Company *et al.*	No. 21.

The defendant, The Farmers' Loan and Trust Company,
342 for answer to the petition of Benjamin G. Clarke and Charles Dillingham, joint receivers herein, for leave to issue twenty-five thousand of receivers' certificates, respectfully shows to the court that it is ignorant of all the matters and things stated in the petition as to the necessity which the petitioning receivers state that

they are under for the making and issuing of receivers' certificates to the amount of $25,000.

This defendant therefore submits the matter to the court to make such order as in its discretion will be just, not, however, waiving or withdrawing its objections to the filing of the bill and to the appointment of the receivers herein for want of jurisdiction in this court and for want of equity on the part of the plaintiff, and for such other reasons as are shown in the defendant's answer herein.

TURNER, LEE & McCLURE,
Solicitors for said Defendant.

We accept service of the attached petition and unite in the application for the order prayed for, believing that it is to the best interests of all parties interested.

BAKER, BOTTS & BAKER,
Solicitors for Texas Central Railway Company.

Endorsed, to wit: "No. 21. U. S. circuit court, northern district of Texas, at Waco. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Central R'y Co. Petition for issue of $25,000 receivers'
343 certificates and acceptance of service by defendant's solicitors. Farrar & Kruttschnitt, solicitors for receivers. Filed April 20, 1886. J. H. Finks, clerk."

344 *Petition of Chas. Dillingham for Allowance.*

MORGAN'S LOUISIANA & TEXAS R. R. & S. S. Co. *vs.* THE TEXAS CENTRAL RAILWAY CO. } No. 21. In Equity.

In the United States Circuit Court for the Northern District of Texas.

To the honorable the judges of said court:

Your petitioner, Chas. Dillingham, one of the joint receivers in this cause, with due respect showeth—

That since the fourth day of April, 1885, he and his joint receiver, Benjamin G. Clarke, have been in possession, under the orders of this honorable court, of the Texas Central Railway Company.

That your petitioner has been the active receiver of said concern and for the past seventeen months has lived in Texas, managing the affairs of said company in the performance of his said trust; that petitioner's duties have been arduous, and that no compensation has been paid him for his services.

Wherefore your petitioner prays that your honors may make him an allowance for his services, to be paid out of the current
345 revenues coming into the hands of the receivers, and which said allowance shall be credited upon any amount herein allowed to the receivers on the final hearing and disposition of this cause.

FARRAR & KRUTTSCHNITT, *Solicitors.*

Order.

On considering the foregoing petition it is ordered by the court that the receivers be authorized and directed to place Charles Dillingham upon the pay-roll of the receivers for the sum of one hundred and fifty dollars per month as an allowance upon his compensation as receiver in this cause, this allowance to date from the possession of the receivers and to continue while Mr. Dillingham gives his personal attention to the business of the company or until the further order of the court.

Dec. 4th, 1886.

DON A. PARDEE,
Circuit Judge.

Endorsed, to wit: "No. 21. In equity. United States circuit court, northern district of Texas, at Waco. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Central R'w'y Co. Petition of Chas Dillingham for allowance. Filed December 6, 1886. J. H. Finks, clerk."

A true copy.

346 *Petition of Receivers for Order Extending Receivers' Certificates.*

MORGAN'S LOUISIANA & TEXAS R. R. & S. S. Co.
vs.
THE TEXAS CENTRAL RAILWAY CO. } No. 21.

In the Circuit Court of the United States, Northern District of Texas, at Waco.

To the honorable the judges of said court:

The petition of Benjamin G. Clarke and Chas. Dillingham, joint receivers, respectfully showeth—

That on April 19, 1886, this honorable court made an order in this cause, which was filed April 20, 1886, authorizing and empowering said receivers to issue certificates or debentures not to exceed $25,000 in amount, to bear a rate of interest not to exceed seven per cent. per annum, and to fall due eight months after date, which said certificates were declared to be a lien upon the road-bed, rolling stock, depots, and other property of said railway company of every nature and description, wheresoever situated, and also a lien
347 upon whatsoever residue of the earnings, income, and profits of said company there may be after deducting the operating expenses, costs of repairs, and expenses of the receivership, such lien to be prior to all other liens, and further authorizing said receivers to sell said certificates at not less than par, the proceeds to be applied to the purposes therein mentioned.

Petitioners further represent that in pursuance of said order they executed two certificates or debentures, one for ten thousand dollars and the other for fifteen thousand dollars, due eight months after

date, and bearing interest at the rate of seven per cent. per annum in accordance with the terms prescribed in said order, which said certificates are now held by T. W. House, of the county of Harris and State of Texas. Said certificates are both dated April 22, 1886.

Petitioners further represent that owing to the short crop made along the line of the Texas Central railway and the expenditure of a large sum of money necessary for maintaining the roadway and operating said road it is inconvenient to pay said certificates at their date of maturity, and that petitioners have arranged with the holder of the same for an extension of time to pay the same for twelve months from their maturity, provided the court's order authorizing such extension be obtained.

Wherefore, premises considered, petitioners pray that they be authorized and empowered to arrange with the holder of said certificates so as to extend the date of payment thereof for twelve months from their maturity, it being understood that the lien originally granted by said order authorizing said certificates be in no way affected or impaired thereby; and as in duty bound, etc.

December 13, 1886.

FARRAR & KRUTTSCHNITT,
Solicitors for Petitioners.

348 We hereby accept service of the within petition and consent to the order prayed for.

BAKER, BOTTS & BAKER,
Solicitors for Railway Company.

Service acknowledged of the preceding application this day.

BALLINGER, MOTT & TERRY,
Solicitors for Trustee, Farmers' L. & Trust Co.

Dec. 13, 1886.

Order.

Premises considered, it is ordered that the receivers be, and they are hereby, authorized and empowered to arrange with the holder of the certificates described in the above petition to extend the date of payment thereof for twelve months from and after the original date of maturity as mentioned in said certificates.

Dec. 20th, 1886.

DON A. PARDEE,
Circuit Judge.

Endorsed, to wit: "No. 21. United States circuit court, northern district of Texas, at Waco. Morgan's La. & T. R'y & S. S. Co. *vs.* Texas Central Railway Co. *et al.* Petition of receivers for order extending receivers' certificates. Filed Dec. 22, 1886. J. H. Finks, clerk. Farrar & Kruttschnitt, solicitors."

349 *Depositions of Whittlesey D. Searls and D. Comyn Moran and Agreement of Counsel and Certificate of Notary. Filed Febr'y 24, 1887. J. H. Finks, Clerk.*

Circuit Court of the United States, Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Defendants.
} Original Bill.

THE FARMERS' LOAN AND TRUST COMPANY, Cross-Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Cross-Defendants.
} Cross Bill.

It is hereby stipulated that testimony on behalf of any of the parties herein may be taken before a notary public; that the
350 depositions of the witnesses may be taken down and reduced to writing by a stenographer, and that when subscribed and sworn to before said notary public shall be of the same force and effect as if taken down personally by and in the presence of said notary public; and, further, that each party may retain his exhibits and need not attach them to the commission. They shall be produced, however, on the final hearing at the request of any party.

Dated New York, November 26, 1886.

TURNER, LEE & McCLURE,
Solicitors for Cross-Complainant.
FARRAR & KRUTTSCHNITT
(By CHARLES H. TWEED),
Solicitors for Morgan's Louisiana & Texas R. R. & Steamship Co.
THOMAS G. HILLHOUSE,
Solicitor for Cross-Defendant, Metropolitan Trust Co.
BAKER, BOTTS & BAKER,
Sol'rs for Texas Central R'y Co.

351 Circuit Court of the United States, Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Defendants.
} Original Bill.

THE FARMERS' LOAN AND TRUST COMPANY, Cross-Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Cross-Defendants.
} Cross-Bill.

Testimony taken pursuant to the above stipulation on behalf of the cross-complainant, The Farmers' Loan and Trust Company, at the office of the Farmers' Loan and Trust Company, 20 William street, and at the office of Turner, Lee & McClure, 20 Nassau street, New York city, before Robert A. Piper, a notary public, on the 26th day of November, 1886 (the witness Whittlesey D.
352 Searls being examined at the office of said trust company and the witness D. Comyn Moran being examined at the office of Messrs. Turner, Lee & McClure).

Appearances: Herbert B. Turner, Esq., for The Farmers' Loan and Trust Company, cross-complainant; Thomas G. Hillhouse, Esq., for the Metropolitan Trust Company of the City of New York; Charles H. Tweed, Esq., for Morgan's Louisiana and Texas Railroad and Steamship Company and the Texas Central Railway Company.

WHITTLESEY D. SEARLS, a witness produced on behalf of The Farmers' Loan and Trust Company, cross-complainant, being duly sworn, testified as follows:

Q. Please give your occupation.

A. Vice-president of The Farmers' Loan and Trust Company, the cross-complainant in this cause.

Q. I show you an original deed, dated September 15, 1879, between the Texas Central Railway Company and the Farmers' Loan and Trust Company, a copy of which is annexed to the cross-
353 bill of complainant herein, marked Schedule A. Have you a record on the books of your company showing how many bonds you have issued under that mortgage and to whom and when?

A. I have.

(Witness produces book and continues:) This book, No. 2, receipt for new bonds, record- on pages 22 and 23. The record on these pages shows the issue under the mortgage in question.

Q. Please tell me how many bonds were issued under that mortgage.

A. Twenty-one hundred and forty-five.

(Witness produces and annexed a copy of the sheet in question, which is annexed to the deposition herein.) * * *

Q. This record shows correctly, does it, the dates and the numbers of bonds issued under that mortgage?

A. It does.

(The mortgage itself is put in evidence and marked Exhibit B.)

Q. I herewith call your attention to another mortgage made by the Texas Central Railway Company to the Farmers' Loan
354 and Trust Company, dated May 16, 1881, a copy of which is annexed to the cross-bill of complaint of this cross-complainant, marked Schedule B. Does the book that you have in your hand also show the issuing of bonds by you under that mortgage?

A. It does.

Q. Please tell how many bonds were issued.

A. It is in the same record book as before recited, on pages 248 and 249; issued twelve hundred and fifty-four bonds.

Q. The statement as to when they were issued is correct, is it?

A. It is.

(Witness annexes a copy of the record in the book from which he has testified. This is marked Exhibit C.)

The cross-complainant puts the mortgage of May 16, 1881, in evidence, which is marked Exhibit D.

Q. To whom were those bonds delivered in each case?

A. Either to the railway company or its president or the authorized agent of the company or its president.

355 Cross-examination by Mr. TWEED:

Q. Have you any knowledge in respect to the disposition of those bonds other than that from time to time, as stated on the folios of the book which you have produced, certain portions of those bonds were delivered by the Farmers' Loan and Trust Company to the railway company or to some person acting on behalf of the railway company?

A. I have no other knowledge.

(Signed) W. D. SEARLS.

Sworn to and subscribed before me this 4th day of February, A. D. 1887.

R. A. PIPER,
[SEAL.] *Notary Public.*

D. COMYN MORAN, a witness produced on behalf of The Farmers' Loan and Trust Company, cross-complainant, being duly sworn, testifies as follows:

Q. Where do you live, Mr. Moran, and what is your business?

A. Banker; reside at 12 East 53d street, in the city of New York.
Q. And your firm is——
A. Moran Brothers.

Q. Does your firm own or hold any bonds of the Texas
356 Central Railway Company?

A. Yes, sir.
Q. What issue?
A. Both issues—1909 and 1911.
Q. Look at the paper I show you and tell me what it is.
A. It is a request to the Farmers' Loan and Trust Company that as the coupons were unpaid to commence proceedings for the foreclosure of the mortgage.
Q. And is it signed by your firm?
A. Signed by Moran Brothers.
Q. And also by other parties?
A. Yes, sir.
Q. Have you any knowledge personally as to whether other parties signed that request?
A. Two of the signatures were in my presence.
Q. Which were those?
A. Gold, Barbour & Swords and Osgood Welsh.

The paper is objected to by Mr. Tweed as incompetent and immaterial and as not sufficiently proved.

The paper referred to is put in evidence and marked Cross-Complainant's Exhibit E.

357 Q. How many bonds does the firm of Moran Brothers hold? And in giving the answer please state as to each.
A. One million and ninety-eight thousand dollars of 1909 and two hundred and three thousand of 1911.
Q. When you signed that letter (Exhibit E) how many bonds did Moran Brothers hold?
A. One million and two hundred and forty-one thousand dollars of 1909 and one hundred and twenty-seven thousand dollars of 1911.
Q. Do you know anything respecting default being made by the railway company in the payment of the interest on the 1909 bonds falling due May 1st, 1885?
A. Yes, sir. I presented a large amount of the coupons of 1909 on the 1st to the company at the Southerns Pacific Company's office, in the Mills building, where the Houston & Texas Central coupons had been previously paid.
Q. When you say a large number give the figure within which you place it.
A. I think I presented coupons on a million dollars of bonds, if not more.

358 Q. And when were they presented?
A. On the first of May, 1885, unless the first of May was a Sunday.
Q. And to whom were they presented? Did you do it personally?

A. Personally; to the coupon clerk at the office of the company—the Southern Pacific or Central Pacific, whichever it is.

Q. Do you know which?

A. Southern Pacific.

Q. Why did you present them at that place?

A. Because the Houston & Texas Central coupons had been paid there before.

Q. Had you collected coupons of this issue there before?

A. No; but I had collected Houston & Texas Central coupons there.

Q. What can you tell me with regard to the coupons which became due on the same day of the other issue—the 1911's?

A. I presented them at the same time.

Q. Same place?

A. Yes.

Q. And they were returned unpaid, were they?

A. They told me that they would not be paid.

Q. Did you have any of them protested?

359 A. No, sir.

Q. You have held those coupons ever since. They have not been paid, have they?

A. Yes; we have held them ever since, and they have not been paid.

Cross-examination by Mr. TWEED:

Q. Of the $1,241,000 of bonds which you state were held by Moran Brothers at the time of the signing of the letter of the 4th May, 1886, how many were owned by that firm?

A. $347,000 of bonds of 1909.

Q. At the time of the signing by Moran Brothers of this letter of May 4th, 1886, how many bonds of 1911 were owned by that firm?

A. $3,000 of bonds were actually owned by us personally.

Q. How many of the bonds of 1909 or the bonds of 1911 are now owned by the firm of Moran Brothers?

A. $348,000 of the bonds of 1909.

Q. How many times did you ever collect at the office of the Southern Pacific Company yourself?

A. Myself?

Q. Yes; any coupons appertaining to bonds of the issue of 1909 or 1911, referred to upon this examination?

360 A. I presented them certainly once; I am positive about once, but I think twice, but I won't be sure about twice. I am positive about the coupon of May 1st, 1886.

Q. You do not understand the question. It is not how many times you went to that office, but how many times you ever collected at that office any coupons?

A. I never collected any. I beg to correct that. I presented coupons on several occasions to John J. Cisco & Sons myself; presented and collected them.

Q. Did you ever present them yourself and collect any coupons

appertaining to any of these bonds at the office of the Southern Pacific Company?

A. I think I have Houston & Texas Central; I am not perfectly sure.

Q. Can you now recollect distinctly, on such presentation, the collection of coupons at the office of the Southern Pacific Company?

A. I think I have presented Houston & Texas Central there and collected them, but won't be sure; but I am positive with respect to John J. Cisco & Sons.

D. COMYN MORAN.

361 Sworn to and subscribed before me this 4th day of February, A. D. 1887.

[SEAL.] R. A. PIPER,
Notary Public.

Circuit Court of the United States, Northern District of Texas.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY, Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Defendants.

THE FARMERS' LOAN AND TRUST COMPANY, Cross-Complainant,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*, Cross-Defendants.

STATE OF NEW YORK,
City and County of New York, Southern District of New York, } *ss:*

I, Robert A. Piper, a notary public in and for the State of
362 New York, duly commissioned, sworn, and qualified, do certify as follows:

I. That pursuant to the annexed stipulation, appearing on the first page, the foregoing testimony was taken before me on the twenty-sixth day of November, A. D. 1886, at the city of New York, in the State of New York, at the office of the Farmers' Loan and Trust Company, at No. 20 William street, in said city, and at the office of Turner, Lee & McClure, at No. 20 Nassau street, in said city, (the witness, Whittlesey D. Searls, being examined at the office of said trust company, and the witness, D. Comyn Moran, being examined at the said office of Turner, Lee & McClure).

II. That the names and residences of the witnesses examined are Whittlesey D. Searls, who resides at the city of New York, in the State of New York, and D. Comyn Moran, who resides at the city of New York, in the State of New York; that each of said witnesses lives at a greater distance than one hundred miles from the place of trial.

III. That said witnesses were of lawful age and of sound mind, and before proceeding with their examinations each of said
363 witnesses was by me duly cautioned and sworn and was carefully examined.

IV. That in further pursuance of said stipulation (appearing on first page) the depositions of said witnesses were taken down and reduced to writing by a competent and experienced stenographer, to me known, and were by him reduced to type-writing.

V. That after the same had been so taken down and reduced to writing (type-writing) the deposition of each witness was carefully read over to and by him and was subscribed and sworn to by him in my presence and before me as and for his deposition.

VI. That in further pursuance of said stipulation the several exhibits put in evidence and referred to by the respective witnesses, marked respectively Exhibits B, C, D, E, were retained by each party offering and owning them.

VII. I do further certify that I am not of counsel or attorney to either of the parties—not interested in the event of the cause; that I have retained the said depositions in my own possession
364 until deposited by me in the post office of the city of New York, in the State of New York, under seal and in letter form, and directed as required by law.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at the city of New York, this seventeenth day of February, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.]

R. A. PIPER,
Notary Public.

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NEW YORK, *4th May*, 1886.

R. G. Ralston, Esqr., president Farmers' Loan & Trust Co.; trustee of the 1st m'g'es Texas Central R. R. Co., New York.

DEAR SIR: As owners, holders, or attorneys of the 1st-m'g'e bonds of the two issues of the Texas Central R'r'd Co. of Texas, on which the coupons due 1st May & 1st Nov'r, 1885, and 1st inst. are unpaid, we request you, as trustee- of said mortgages, to commence immediate proceedings to foreclose such mortgages and to have a proper person appointed as receiver of said road pending the legal proceedings, as the present parties in charge of said road represent interests adverse to those of the 1st-m'g'e bondholders.

Very respectfully yours,

—— ——.

	Bonds due in—	
	1909.	1911.
Moran Brothers representing	$1,241,000	127,000
	1909.	
Gold, Barbour & Swords	34,000	
Henry H. McKary	20,000	
Pomroy Bros.	5,000	
Osgood Welsh	15,000	

366 *Note of Evidence. Filed April* 11, 1887. *J. H. Finks, Clerk.*

U. S. Circuit Court, Northern Dist. of Texas, at Waco.

MORGAN'S LA. & TEXAS RAILROAD & STEAMSHIP CO.
vs.
THE TEXAS CENTRAL R'Y CO. *et als.*
} No. 21. Original Bill.

THE FARMERS' LOAN & TRUST CO.
vs.
THE TEXAS CENTRAL R'Y CO. *et als.*
} No. 33. Cross-Bill.

Note of evidence taken on the trial of this cause before the Hon. Don A. Pardee in open court this 11th day of April, 1887.

1st. The complainant, Morgan's La. & Texas Railroad & Steamship Co., offers the oral testimony taken & the documents & exhibits filed before Jno. G. Winter, special master in chancery, at Houston, on the 26th day of March, 1887, contained in the report of said master herein filed this day.

367 2nd. The same complainant offers the whole record of the proceedings had in this cause.

3d. The cross-complainant, The Farmers' Loan & Trust Co., offers the depositions of Whittlesey D. Searls and D. Comyn Moran and all the exhibits therein referred to, including the two original deeds of trust to said cross-complainant taken by consent in the city of New York on the 26th day of November, 1886.

4th. The same cross-complainant offers all the agreements, documents, — pleadings had & filed in this cause, & particularly a letter from H. Hall, sec't'y, to Chas. Dillingham, dated Houston, Texas, Feb. 11th, 1887, & filed in this cause by agreement on Feb. 21st, 1887.

368 Deed, of date September 15, 1879, between the Texas Central Railway Co. and the Farmers' Loan & Trust Co. of the City of New York, and filed in this cause April 11th, 1887.

See Schedule "A," on page "153" of this transcript, attached to bill of cross-complainant herein, for a copy of said deed.

First mortgage, dated May 16, 1881, from the Texas Central Railway Company to the Farmers' Loan and Trust Company of the City of New York, and filed in this cause April 11th, 1887.

See Schedule "B," on page "164" of this transcript, attached to bill of cross-complainant herein, for a copy of said first mortgage.

J. H FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

369 At a stated term of the circuit court of the United States for the northern district of Texas, held at the court-rooms, in the city of Waco, on the eleventh day of April, 1887.

Present: The Honorable Don A. Pardee, circuit judge.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, and THE METROPOLITAN TRUST COMPANY of the City of New York, as Trustee.	Original Bill. In Equity. No. 21.
THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE METROPOLITAN TRUST COMPANY of the City of New York, and MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY.	Cross-Bill. No. 33.

370 This cause came on to be heard at this term and was argued by counsel, and thereupon, upon due consideration thereof, it was ordered, adjudged, and decreed as follows, namely:

I. The court finds from the pleadings, exhibits, and evidence that the cross-complainant herein, The Farmers' Loan and Trust Company, is and for more than twenty years last past has been a corporation duly organized and existing under the laws of the State of New York, having its principal office for the transaction of business in the city of New York, in said State of New York; that the defendant, The Texas Central Railway Company, is a corporation duly organized and existing under the laws of the State of Texas, with power to construct and operate lines of railway in said State, having its principal office for the transaction of business at Ross, in said State of Texas; that the defendant, The Metropolitan Trust Company of the City of New York, is a corporation duly organized and existing under the laws of the State of New York, having its principal office for the transaction of business in the city of New York, in said State of New York, and that the original complainant and cross-complainant, Morgan's Louisiana and Texas Railroad and Steamship Company, is a corporation duly organized and existing under the laws of the State of Louisiana, having its principal office for the transaction of business in the city of New Orleans, in said State of Louisiana.

II. The court further finds that on or about September 15th, 1879, the defendant, The Texas Central Railway Company, executed and delivered to the complainant, The Farmers' Loan and Trust Company, its certain first mortgage or deed of trust dated that day, wherein and whereby the said railway company, in order to secure the payment of a series of one-thousand-dollar bonds to be

371 issued at the rate of fifteen thousand dollars for each mile of road, all to bear said date, did grant and convey unto the cross-complainant, its successors and assigns, all and singular the main line of the said Texas Central Railway Company's railway, built and to be built, beginning at the Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, and Comanche to or near the centre of

Eastland county, a distance of about one hundred and thirty miles, together with all side tracks, turnouts, rolling stock, equipments, and material, all rights of way and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, including and meaning to include all the property, real and personal, then acquired or which thereafter might be acquired by the said company in the State of Texas used for and pertaining to the operation of the said railway; which said conveyance of mortgage was made in trust, on certain terms and condidions, for the benefit of the owners and holders of the said bonds and of the interest coupons thereto annexed.

III. The court further finds that in the said mortgage or deed of trust it was, among other things, provided that in case the Texas Central Railway Company should fail to pay any of the interest on any of the said bonds at any time when the same might become due and payable, and such default should continue sixty days after demand, then and thereupon the principal of all the said bonds should be and become immediately due and payable.

IV. The court further finds that the said mortgage or deed of trust was and is the proper act and deed of the defendant, The Texas Central Railway Company, by it authorized, made, and delivered in all respects in conformity to law, and that the same was duly recorded in the offices of the clerks of the several counties wherein said
372 railroad and other property affected thereby was situated on or about October 7th, 1879, so as to be and constitute a first lien upon the mortgaged premises and property therein mentioned and described; that the same was also registered, in all respects according to law, so as to affect the chattels and other personal property of the said railway company in each and every one of said counties, the original or a certified copy thereof remaining in each case on deposit.

V. The court further finds that the bonds to secure which said mortgage or deed of trust was made were all dated September 15th, 1879, and were made for the sum of one thousand dollars each, payable to bearer November 1st, 1909 (and they are herein designated for convenience as the bonds of 1909), with interest at seven per centum per annum, payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, both principal and interest being payable in gold coin of the United States, and they were each identified by a certificate thereon made by the trustee to the effect that the bond so certified was one of the series described in and secured by the said mortgage or deed of trust. Two thousand one hundred and forty-five of said bonds, aggregating two million one hundred and forty-five thousand dollars of principal, have been issued and are outstanding as valid obligations of the said defendant, The Texas Central Railway Company, and entitled to the benefit of the security of the said mortgage or deed of trust.

VI. The court further finds that after making the said deed of trust the charter of the defendant, The Texas Central Railway Company, was amended, and that thereupon, on or about May 16th, 1881,

the defendant, The Texas Central Railway Company, executed and delivered to the cross-complainant, The Farmers' Loan and
373 Trust Company, a certain other deed of trust, dated that day, wherein and whereby for the purpose of meeting the expense of constructing, completing, and putting into operation the extension of its railway and its branch line authorized to be constructed by the amendment to its charter, and for the purpose of exchanging and redeeming the series of bonds above described to the amount of two million one hundred and forty-five thousand dollars, secured by the first above-mentioned deed of trust, said railway company, in order to secure the payment of a certain other series of one-thousand-dollar bonds to be issued for the purposes aforesaid, at the rate of fifteen thousand dollars for each mile of road, all to bear said last-mentioned date, did grant and convey unto the cross-complainant, its successors and assigns, all and singular the main line of the said Texas Central Railway Company's railway, then built and to be built, beginning at the town of Ross, in McLennan county, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackelford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford, and Sherman to a point on the north boundary line of the State of Texas between the 101st and 102d meridian of west longitude, a distance of about 375 miles, and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River, and Bowie to a point on Red River in Bowie county east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles; and also all and
374 singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county on the said company's branch line of railway from Whitney to Red River in Bowie county, thence through the counties of Hopkins, Delta, and Lamar to a point on Red River in Lamar county near the mouth of Boggy river, a distance of about sixty-five miles, together with all side tracks, turnouts, rolling stock, equipments, and materials, all rights of way and tracks, depot and shop grounds, tenements, hereditaments, rights, and franchises, including and meaning to include all the property, real and personal, then acquired or which might thereafter be acquired by the said railway company in the State of Texas used for and pertaining to the operation of the said railway as therein described, which said conveyance of mortgage was made in trust, on certain terms and conditions, for the benefit of the holders and owners of the said last-mentioned bonds and of the interst coupons thereon annexed, and which said conveyance of mortgage or deed of trust, so far as the same affected property which was already subject to the lien of the first mortgage or deed of trust dated September 15th, 1879, and

previously made to the Farmers' Loan and Trust Company, as above stated, was in all respects subsequent and subsidiary to the lien of said first mortgage or deed of trust.

VII. The court further finds that in the said last-mentioned deed of trust it was, among other things, provided that in case the Texas Central Railway Company should fail to pay any of the interest on any of the said bonds at any time when the same might become due and payable, and such default should continue sixty days after demand, then and thereupon the principal of all the said bonds should be and become immediately due and payable.

375 VIII. The court further finds that the said last-mentioned mortgage or deed of trust was and is the proper act and deed of the defendant, The Texas Central Railway Company, by it authorized, made, and delivered in all respects in conformity to law, and that the same was duly recorded in the offices of the clerks of the several counties wherein said railroad and other property affected thereby was situated on about July 28th, 1881, so as to be and constitute a first lien upon the mortgaged premises and property therein mentioned and described, except as to that portion thereof above first described as subject to the lien of the first mortgage of September 15th, 1879, above mentioned, and as to that portion of the mortgaged premises and property it was so recorded so as to constitute a second lien on the same, subject only to the lien of the said first mortgage; that the said mortgage or deed of trust of May 16th, 1881, was also registered, in all respects according to law, so as to affect the chattels and other personal property of the said railway company in each and every one of said counties, the original or a certified copy thereof remaining in each case on deposit.

IX. The court further finds that the bonds to secure which the mortgage or deed of trust of May 16th, 1881, was made were all dated that day and were made for the sum of one thousand dollars each, payable to bearer May 1st, 1911 (and they are designated for convenience as the bonds of 1911), with interest at seven per centum per annum, payable semi-annually on the first days of May and November in each year on the presentation and surrender of the proper annexed coupons, both principal and interest being payable in gold coin of the United States, and they were each identified by a certificate thereon, made by the trustee, to the effect that
376 the bond so certified was one of the series described in and secured by the said mortgage or deed of trust of May 16th, 1881. Under the said last-mentioned mortgage or deed of trust one thousand two hundred and fifty-four of said bonds, aggregating one million two hundred and fifty-four thousand dollars, have been issued and are outstanding as valid obligations of the said defendant, The Texas Central Railway Company, and entitled to the benefit of the security of the said mortgage or deed of trust of May 16th, 1881.

X. The court further finds that on or about the first day of October, 1884, the said defendant, The Texas Central Railway Company, made and delivered a certain other mortgage or deed of trust to the defendant, The Metropolitan Trust Company of the City of New York, to secure a series of bonds to be issued and to be known as

general mortgage bonds of said company, and that said railway company did, by said general mortgage or deed of trust, grant and convey to said Metropolitan Trust Company of the City of New York all the property theretofore conveyed to the Farmers' Loan and Trust Company by the mortgages or deeds of trust hereinabove set forth and either of them; but the court does hereby find and adjudge that the rights, liens, and claims of the said Metropolitan Trust Company of the City of New York and the beneficiaries under its trust, so far as the same exist, are in all respects subsequent and subsidiary and junior to the rights and equities of the cross-complainant herein as trustee under the said mortgages or deeds of trust so made to the cross-complainant as aforesaid and of the holders of the bonds to secure which the same were made respectively, both of the said mortgages or deeds of trust to the cross-complainant being prior liens to the said general mortgage—the first as to the property therein described and the second as to the entire property of the
377 defendant railway company; that the general mortgage bonds provided to be issued under the said deed of trust to the Metropolitan Trust Company of the City of New York were duly executed and signed by the said defendant railway company and delivered to the said Metropolitan Trust Company for the purpose of having the said trust company certify the same, as provided in the said deed of trust, but that the said Metropolitan Trust Company declined making such certification on the ground that the mortgage had not been recorded in certain of the counties mentioned in the said act of mortgage through which the Texas Central Railway Company had a right under its charter to construct the line of railway mentioned in said mortgage, but through which no railroad had at that time or has now been constructed; that while the said mortgage was undergoing recording in the said counties aforesaid the Texas Central Railroad Company, on or about the first day of November, 1884, in settlement of its indebtedness to the Houston & Texas Central Railroad Company, a corporation organized under the laws of the State of Texas, did make and execute its sixteen certain promissory notes—fifteen thereof for the sum of fifty thousand dollars each and one thereof for the sum of eleven thousand nine hundred and ninety-two dollars and four cents—and for the security of each of the said fifty-thousand-dollar notes the said Texas Central Railway Company did pledge to the said Houston & Texas Central Railway Company one hundred and fifty of its said general mortgage bonds, and for the security of its said note of eleven thousand nine hundred and ninety-two dollars and four cents the said Texas Central Railway Company did so pledge thirty-six of its said general mortgage bonds, thus making a pledge of a total amount of general mortgage bonds of two million two hundred and eighty-six
378 thousand dollars, being the total amount of said general mortgage bonds which the said Texas Central Railway Company was authorized to issue for the length of the road already built by it; that all of the said notes were dated November first, 1884, and all due on demand; that due demand has been made for the payment of said notes on the Texas Central Railway Company,

which has failed to pay the same; that in order to make a pledge of said bonds, which were not yet countersigned and certified by the trustee, the said Texas Central railway did issue and deliver to the said Houston & Texas Central Railway Company its certificates or obligations in lieu of said bonds, obligating itself to deliver said bonds, as soon as executed and signed by said trustee, to said Houston & Texas Central Railway Company; that said Houston & Texas Central Company did pledge said notes of said Texas Central Railway Company, together with the certificates for the bonds securing the same, to the complainant herein, Morgan's Louisiana & Texas Railroad and Steamship Company, as part security for its indebtedness due by said Houston & Texas Central Railway Company to the said complainant, and that the complainant herein, Morgan's Louisiana & Texas Railroad and Steamship Company, is the holder, as pledgee, of all of the said notes of the Texas Central Railway Company, as also certificates for the bonds securing the same, and that the complainant herein, Morgan's Louisiana & Texas Railroad and Steamship Company, has an equitable lien upon all of the property above described to the amount of $761,992.04, with six per centum per annum interest thereon from the first day of November, 1884, until paid, said lien, however, being junior and subordinate in all respects upon the property above described to the liens growing out of the mortgages or deeds of trust as aforesaid exe-
379 cuted to The Farmers' Loan and Trust Company, cross-complainant herein, and that in case the proceeds of the sale of the said property as hereinbelow ordered to be sold shall not be sufficient to pay all liens and charges herein decreed to be prior to the lien and charges of Morgan's Louisiana & Texas Railroad and Steamship Company, and also the sum herein decreed to be paid to the said Morgan's Louisiana & Texas Railroad and Steamship Company, the said last-named company shall have execution against the said Texas Central Railway Company for all such overplus remaining unpaid as aforesaid.

XI. The court further finds that the defendant, The Texas Central Railway Company, was on May 1st, 1885, and still is insolvent and unable to meet or pay its obligations, including the coupons issued on its bonds secured by the said mortgages or deeds of trust to the Farmers' Loan and Trust Company respectively maturing upon that day, and that it wholly failed to pay the same, and that it made default in the payment of all the said coupons which matured May 1st, 1885, upon the bonds secured by the said mortgages or deeds of trusts or either of them, and that it has not paid any of the said coupons maturing on either of said mortgages or deeds of trust which fell due November 1st, 1885, nor those which fell due May 1st, 1886, nor any coupon which matured since that day, but that all the said coupon interest remains in default and overdue and unpaid; and, further, that payment of said interest has been duly demanded, and that such default has continued sixty days after such demand, and that therefore the principal of all the said bonds secured by the said deeds of trust and each and all of them (including

both the bonds of 1909 and the bonds of 1911) is and has become immediately due and payable.

XII. The court further finds that the principal and interest overdue and unpaid upon the bonds secured by the said deeds of trust amounts as follows, namely:

380 First. As to the mortgage dated September 15th, 1879, that the principal sum of all the bonds of 1909 is two million one hundred and forty-five thousand dollars; that on the first day of May, 1885, and again on the first day of November, 1885, and again on the first day of May, 1886, and again on the first day of November, 1886, there matured and fell due coupons representing interest on the said bonds amounting on each of said days to the sum of seventy-five thousand and seventy-five dollars, so that the amount of said coupon interest in the aggregate amounts to the sum — three hundred thousand and three hundred dollars, and that interest is due upon said coupons from the time when they respectively matured to the date of this decree, amounting to the sum of twenty-one thousand five hundred and twenty-one $\frac{52}{100}$ dollars, and that interest is also due on the principal sum of said bonds from November 1st, 1886, when the last coupon matured, amounting to sixty-six thousand seven hundred and thirty-three and $\frac{33}{100}$ dollars, so that the entire amount of principal and interest due on said bonds of 1909 to the date of this decree is the sum of two million five hundred and thirty-three thousand five hundred and fifty-four and $\frac{85}{100}$ dollars, all of which is payable in lawful gold coin of the United States.

Second. As to the deed of trust dated May 16th, 1881, that the principal sum of all the bonds of 1911 is one million two hundred and fifty-four thousand dollars; that on the first day of May, 1885, and again on the first day of November, 1885, and again on the first day of May, 1886, and again on the first day of November, 1886, there matured and fell due coupons representing interest on said bonds amounting on each of said days to the sum of forty-three thousand eight hundred and ninety dollars, so that the amount of said coupon interest in the aggregate amounts to

381 the sum of one hundred and seventy-five thousand five hundred and sixty dollars, and that interest is due upon said coupons from the time when they respectively matured to the date of this decree, amounting to the sum of thirteen thousand four hundred and $\frac{81}{100}$ dollars, and that interest is also due on the principal sum of said bonds from November 1st, 1886, when the last coupon matured, amounting to thirty-nine thousand and thirteen and $\frac{33}{100}$ dollars, so that the entire amount of principal and interest due on said bonds of 1911 to the date of this decree is the sum of one million four hundred and eighty-one thousand nine hundred and seventy-four and $\frac{13}{100}$ dollars, all of which is payable in lawful gold coin of the United States.

XII. The court further finds that by reason of the default of the said Texas Central Railway Company to pay the said coupon interest due as aforesaid, and any of it, and by reason of other matters and things hereinabove alleged, the conditions of the said mort-

gages and deeds of trust of September 15th, 1879, and May 16th, 1881, and of each of them, made by the Texas Central Railway Company to the Farmers' Loan and Trust Company have been broken, and that the said mortgages and deeds of trust, and both of them, have become absolute, and that the trustee is entitled to a decree for the sale of all the said mortgaged property to satisfy the principal and interest of the said bonds secured by the said mortgages or deeds of trust respectively, and all of them.

XIV. And the court finds that the claim of the complainant, Morgan's Louisiana & Texas Railroad and Steamship Company, is in all respects subsequent and subsidiary and junior to the lien of the mortgages or deeds of trust made to the Farmers' Loan and Trust Company as aforesaid, and each of them, upon the property
382 described in the foregoing deeds of trust to said Farmers' Loan and Trust Company.

XV. The court doth therefore order, adjudge, and decree that the principal sums specified in the said bonds secured by the mortgages or deeds of trust made to the Farmers' Loan and Trust Company, bearing date September 15th, 1879, and May 16th, 1881, respectively, and hereinabove described, and each and all of said sums have now become due and payable, in accordance with the terms of the said instruments and of the said mortgages or deeds of trust so made to said trustee as aforesaid.

XVI. And the court doth further order, adjudge, and decree that the said defendant, The Texas Central Railway Company, shall, within ten days from the date of this decree, pay into this court, for the use and benefit of the holders of the bonds and unpaid coupons secured by the said mortgages or deeds of trust to the Farmers' Loan and Trust Company, the sum of four million and fifteen thousand five hundred and twenty-eight and $\frac{38}{100}$ dollars in gold coin of the United States, with interest thereon from the date of this decree at the rate of eight per cent. per annum, and also a sufficient sum of money to defray the costs of this cause, to be taxed.

XVII. The court doth further order, adjudge, and decree that in default of the payment of the sums so above ordered to be paid by the said defendant or by some other person on its behalf, then all the equity of redemption of the said defendant, The Texas Central Railway Company, and of all the parties to this suit and of all the holders of bonds or other claims issued under and secured by the mortgage made to the Metropolitan Trust Company of the City of New York of, in, or to the said mortgaged premises, property, assets, rights, and franchises, and every part and par-
383 cel thereof, described in the said mortgages or deeds of trust to the cross-complainant, The Farmers' Loan and Trust Company, or either of them, including all property embraced within the terms of the said mortgage of May 16th, 1881, and not included within the terms of the mortgage of September 15th, 1879, shall be barred and foreclosed, and that in default of such payment all the said mortgaged premises and property, real, personal or mixed, rights, and franchises shall be sold to the highest bidder for cash, without appraisement or redemption, at public auction, at twelve

o'clock noon, at the door of the court-house of the county of McLennan, in the city of Waco, in the State of Texas, at a day to be named by the commissioners herein appointed in their advertisement of sale, and previous notice of the time and place of such sale shall be given by publication once a week for the period of eight successive weeks prior to the time of such sale in two newspapers, one published in the city of Waco, in the State of Texas, and the other in the city of New York, in the State of New York. The commissioners or either of them may adjourn the sale from day to day or week to week without further advertisement, but only on request of the cross-complainant or its solicitors or by the order of the court or a judge thereof.

XVIII. And it is further ordered, adjudged, and decreed that the railroad property and premises as described in the said mortgages to the Farmers' Loan and Trust Company shall be sold as one parcel and as an entirety, the court hereby finding such mode of sale to be for the best interests of all concerned, and upon the following terms and conditions, to wit:

First. Sale shall be for cash, and the purchaser at the sale shall then and there pay over to the master commissioners the sum of twenty-five thousand dollars in cash and the remainder of said bid upon confirmation of the sale and delivery of title, as hereinafter provided.

384 Second. Upon confirmation of the sale and delivery of title the purchaser shall pay in cash such sums as may be ascertained on due reference to and report by the master sufficient to pay off and satisfy all the indebtedness of the receivers incurred by them in this cause, including all the expenses and costs of the receivers' administration of the property, all claims and demands adjudged against them growing out of their operation of the property, all receivers' certificates heretofore ordered to be issued and remaining unpaid, all indebtedness for pay-rolls, materials, and supplies due by the said receivers, and also the compensation of the receivers and their solicitors, and if any claim remains unsettled or unascertained at the date of the confirmation of the sale and delivery of title to the purchaser which should be or may afterwards be adjudged to be a claim against the said receivers, and the cash paid in shall not be sufficient to pay off the same, the said claim or claims so adjudged shall be, and are hereby, agreed to be a first and prior lien on the said railway in the hands of the purchaser, and may be so enforced by the order of this court; and no claim shall be filed against the said receivers growing out of their administration of the property, unless the same shall be filed within sixty days from the date of the order confirming the sale herein directed to be made; and the special master in chancery, John G. Winter, heretofore appointed in this case, is hereby directed to examine and report to this court on or before the date fixed for the sale of the property herein, after due and proper notice to the parties concerned, what amounts are to be paid for all of the purposes mentioned in this subdivision.

Third. The purchaser shall also pay in cash the costs of this suit,

to be taxed, and also the compensation of the cross-com-
385 plainant herein for its services, charges, and expenses in the execution of its trusts respecting the two mortgages made to it, including its own compensation and its disbursements and allowances for solicitors' and counsel fees in the execution of its trusts respecting such mortgages, and for services in this cause, and for all proper expenses attendant upon the sale of the property subject to the said mortgages, including the commissions and compensation of the commissioners making such sale, all which charges and expenses shall be hereafter fixed and allowed by the court or a judge thereof, and as to all matters mentioned in this subdivision, except the compensation of the special master commissioners, reference is hereby made to John G. Winter, special master in chancery, with directions to examine and report to the court the proper amounts to be fixed and allowed for the same, and also any other allowances proper to be made to solicitors and counsel in this cause.

Fourth. After fully paying off all the claims entitled to be the first paid out of the proceeds of the sale in cash, above set forth in subdivisions 1st, 2nd, and 3rd of this section, the remainder of said bid may be paid either in cash or in bonds or overdue coupons belonging thereto secured by the said mortgages or either of them made to the Farmers' Loan and Trust Company as aforesaid, the said bonds and coupons to be received at such price or value as will be equivalent to the distributive amount that the holders thereof would be entitled to receive in case the entire amount of the bid were paid in cash. And whereas $2,145,000.00 of first-mortgage bonds were issued upon and hold a first lien on one hundred and forty-three miles of said railway and property, and $1,254,000.00 of bonds were issued upon and hold a first lien on eighty-three miles of said railway and property, it is therefore ordered and directed
that the remainder of the said cash bid, after the aforesaid
386 payments entitled to be first paid, be divided into two parcels in the proportion and on the basis of the mileage of the road sold, the total line of road sold being two hundred and twenty-six miles, said liens on first-mortgage bonds, to wit, the bonds of 1909, being the first lien on the 143 miles of said road as aforesaid, and the bonds of 1911 being a first lien upon the 83 miles of said road as aforesaid; therefore the remainder of the said bid shall be divided so as to set off 143.226 of said amount to be distributed among the bonds of 1909, and 83.226 of said bid to be distributed among the bonds of 1911.

Fifth. And in case the amount of said bid shall be more than sufficient to pay the sums and amounts set forth in subdivisions 1st, 2nd, 3rd, and 4th above of this section the amount of such overplus shall be applied to the payment of the sums herein decreed to be due to the complainant, Morgan's Louisiana & Texas Railroad and Steamship Company.

XIX. And it is further ordered, adjudged, and decreed that if the proceeds of the sale of the property above directed to be made shall not be sufficient to satisfy the sum herein adjudged in favor of the Farmers' Loan and Trust Company, trustee, and in favor of Mor-

gan's Louisiana & Texas Railroad and Steamship Company, the said complainant, Morgan's Louisiana & Texas Railroad and Steamship Company, and the said cross-complainant The Farmers' Loan and Trust Company, are hereby declared to have a personal judgment and decree against the said Texas Central Railway Company for the balance that will remain due to them respectively over and above the proceeds of the said sale, and shall have execution in due form of law for the balance due them respectively, and leave is hereby given to the said complainant and cross-complainant to levy the said executions upon the property of the defendant now
387 & 388 in the hands of the receivers, if any, not subject to the mortgages above mentioned, and to sell the same in due form of law, and to apply the proceeds of the same to the satisfaction of the said balance due them respectively.

XX. It is further ordered that Charles Dillingham and John G. Winter be, and they are hereby, appointed special master commissioners for the purpose of making the sale hereby decreed, and to execute and deliver a deed of conveyance of the property so to be sold to the purchaser or purchasers thereof on the order of the court or a judge thereof, in case of such sale.

The court reserves, however, the right, in term time or at chambers, to appoint another special master commissioner, with like powers, in case of the death, disability, or declination to serve of either of the special master commissioners hereby designated.

The sale so to be made by said master commissioners shall be forthwith reported by them to the court, and the same shall stand confirmed unless within ten days from the filing of said report some party entitled so to do shall file exceptions to said sale, and in case of the filing of any such exceptions the same shall immediately stand for hearing before the court or a judge thereof.

XXI. And it is further ordered, adjudged, and decreed that the purchaser or purchasers of the property herein and hereby ordered to be sold shall be invested with and shall hold, possess, and enjoy the said mortgaged premises and property and all the rights, privileges, and franchises appurtenant thereto as fully and completely as the said Texas Central Railway Company, defendant herein, now holds or enjoys or at the time of the commencement of this suit held and enjoyed or is or was entitled to hold or enjoy the same; and, further, that the purchaser or purchasers shall have and
389 be entitled to hold said railroad and property free and discharged from the claims of all parties to this suit, including the original complainant, and all intervenors herein.

XXII. It is further ordered, adjudged, and decreed that any party to this cause or the receivers or master commissioners herein appointed may apply to the court for such orders necessary for the carrying of this decree into execution as equity and the nature of the matter may require.

In open court, April 12th, 1887.

DON A. PARDEE,
Circuit Judge.

390 Endorsed as follows, to wit: Morgan's Louisiana and Texas Railroad and Steamship Company *vs.* The Texas Central Railway Company, The Farmers' Loan and Trust Company, as trustee, and The Metropolitan Trust Company of the City of New York, as trustee. Original bill. In equity. No. 21. The Farmers' Loan and Trust Company, as trustee, *vs.* The Texas Central Railway Company, The Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company. Cross-bill. No. 33. Final decree. Filed April 12, 1887. J. H. Finks, clerk.

391 *Petition and Order of Appeal.*

In the Circuit Court of the United States, Fifth Circuit and Northern District of Texas, at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE Farmers' Loan and Trust Company, as Trustee, and The Metropolitan Trust Company of the City of New York, as Trustee.	Original Bill. In Equity. No. 21.
THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company.	Cross-Bill. No. 33.

392 To the honorable the judges of said court:

The petition of Morgan's Louisiana and Texas Railroad and Steamship Company, complainant in the original bill herein and defendant in the cross-bill filed by the Farmers' Loan and Trust Company as trustee, with due respect, shows—

That on the 12th day of April, 1887, your honors entered and filed in this cause a final decree, in which your petitioner is informed and believes there is serious and grave error to its prejudice.

That your petitioner desires to appeal from the whole of said decree, and desires that said appeal shall operate as a supersedeas; wherefore your petitioner prays that your honors may grant them an order of appeal from the whole of said decree, returnable to the Supreme Court of the United States, at the October term thereof, for the year 1887, and that said appeal may operate as a supersedeas on petitioner's giving bond, to be approved by the court, in such sum as they may fix, and petitioner prays that citations of appeal in due form of law be directed to the Texas Central Railway Company, to the Farmers' Loan and Trust Company, as trustee, and to the Metropolitan Trust Company of the City of New York, as trustee, commanding them to appear and answer this appeal.

FARRAR & KRUTTSCHNITT, *Solicitors.*

Order.

The foregoing petition considered, it is ordered that Morgan's Louisiana and Texas Railroad and Steamship Company be allowed an appeal from the whole decree herein rendered and filed on the 12th day of April, 1887, on their giving bond, with surety approved by the court, in the sum of $300,000 (say three hundred thou-
393 sand dollars), and that citations of appeal issue as prayed for in the foregoing petition.

May 5th, 1887.

DON A. PARDEE, *Judge.*

Endorsed, to wit: "No. 21, chancery docket. United States circuit court, fifth circuit and northern district of Texas, at Waco. Morgan's Louisiana and Texas R. R. & S. S. Co. *vs.* The Texas Central Railway Company *et al.* The Farmers' Loan & Trust Co., trustee, *vs.* The Texas Central Railway Co. *et al.* Cross-bill. Petition and order of appeal. Filed May 7th, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy. Farrar & Kruttschnitt, solicitors."

394 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Texas.

The President of the United States to the Texas Central Railway Company, a corporation organized under the laws of the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and northern district of Texas, wherein Morgan's Louisiana & Texas Railroad & Steamship Company is appellant and The Texas Central Railway Company, The Farmers' Loan & Trust Company, as trustee, and The Metropolitan Trust Co., as trustee, are appellees, to show cause, if any there be, why the judgment rendered against the said Morgan's Louisiana & Texas Railroad and Steamship Co., as in said decree of date April 12th, 1887, mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

395 [Endorsed:] United States circuit court, northern district of Texas. No. 21. Morgan's L. & T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. Citation. Marshal's return. Filed May 28, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, Alphonse Philips, a notary public in & for said parish & State, Daniel D. Avery, Esq., to me personally known, who, being duly sworn, deposes & says that he served a duplicate original of the within citation of appeal on the Texas Central Railway Company by handing the same, on this 24th day of May, 1887, to A. C. Hutchinson, Esq., president of said company.

DAN. D. AVERY.

Sworn to & subscribed before me this 24th day of May, 1887.

{ Seal Alphonse V. Philips, Notary Public, }
{ State of La., Parish of Orleans. }

ALPHONSE PHILIPS, *Not. Pub.*

396 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Texas.

The President of the United States to Morgan's Louisiana & Texas Railroad & Steamship Company, a corporation organized under the laws of the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and northern district of Texas, wherein The Texas Central Railway Company is appellant and Morgan's Louisiana — Texas Railroad & Steamship Company, The Farmers' Loan & Trust Co., as trustee, and The Metropolitan Trust Co., as trustee, are appellees, to show cause, if any there be, why the judgment rendered against the said Texas Central Railway Company, as in said decree of date April 12th, 1887, mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

397 [Endorsed:] United States circuit court, northern district of Texas. No. 21. Morgan's L. & T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et als.* Citation. Marshal's return. Filed May 28, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, Alphonse Philips, a notary public in & for said parish & State, Daniel D. Avery, Esq., to

me personally known, who, being duly sworn, deposes & says that he served a duplicate original of the within citation of appeal on the Morgan's Louisiana & Texas Railroad & Steamship Co. by handing the same, on the 24th day of May, 1887, to A. C. Hutchinson, president of said company.

DAN. D. AVERY.

Sworn to & subscribed before me this 24th day of May, 1887.

{ Seal Alphonse V. Philips, Notary Public, State of La., Parish of Orleans. }

ALPHONSE PHILIPS, *Not. Pub.*

398 *Petition and Order of Appeal.*

In the Circuit Court of the United States, Fifth Circuit and Northern District of Texas, at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE FARMERS' LOAN and TRUST COMMPANY, as Trustee, and The Metropolitan Trust Company of the City of New York, as Trustee.	Original Bill. In Equity. No. 21.
THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE METROPOLITAN TRUST COMPANY of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company.	Cross-Bill. No. 33.

399 To the honorable the judge of said court:

The petition of The Texas Railway Company, defendant herein, with due respect, shows—

That on the 12th day of April, 1887, your honors entered and filed in this cause a final decree in which your petitioner is informed and believes there is serious and grave error to its prejudice.

That your petitioner desires to appeal from the whole of said decree and desires that said appeal shall operate as a supersedeas; wherefore your petitioner prays that your honors may grant them an order of appeal from the whole of said decree, returnable to the Supreme Court of the United States at the October term thereof for the year 1887, and that said appeal may operate as a supersedeas on petitioner's giving bond, to be approved by the court, in such sum as the court may fix, and petitioner prays that citations of appeal in due form of law be directed to the Morgan's Louisiana and Texas Railroad and Steamship Company, to the Farmers' Loan and Trust Company as trustee, and to the Metropolitan Trust Company of the

City of New York as trustee, commanding them to appear and answer this appeal.

BAKER, BOTTS & BAKER,
Solicitors for Texas Central R'y Co.

Order.

The foregoing petition considered, it is ordered that the Texas Central Railway Company be allowed an appeal from the whole decree herein rendered and filed on the 12th day of April, 1887, on their giving bond, with a surety approved by the court, in the sum of $300,000 (say three hundred thousand dollars), and that
400 citations of appeal issue as prayed for in the foregoing petition. In case the said railway company *to* take an appeal, not to operate as a supersedeas, the bond for such appeal is hereby fixed at five thousand dollars.

May 23d, 1887.

DON A. PARDEE, *Judge.*

Endorsed, to wit: "No. 21, chancery docket. U. S. circuit court, northern district of Texas. Morgan's L. and T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et al.* The Farmers' Loan & Trust Co. *vs.* The Texas Central R'y Co. *et al.* Cross-bill, No. 33. Petition and order of appeal. Filed May 28th, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

401 *Bond of Morgan's Louisiana & Texas Railroad and Steamship Company.*

Supreme Court of the United States.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE Farmers' Loan and Trust Company as Trustee, and The Metropolitan Trust Company of the City of New York as Trustee.	Original Bill.
THE FARMERS' LOAN AND TRUST COMPANY, as Trustee, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, THE Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company.	Cross-Bill.

402 Know all men by these presents that we, Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation existing under the laws of the State of Louisiana; Collis P. Huntington, of the town of Westchester and State of New York, and Charles Crocker, of the city, county, and State of New York, are held

and firmly bound unto the Texas Central Railway Company, the Farmers' Loan and Trust Company as trustee, and the Metropolitan Trust Company of the City of New York as trustee in the sum of three hundred thousand dollars, to be paid to the said obligees, their and each of their successors; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 23d day of May, 1887.

Whereas the above-named Morgan's Louisiana and Texas Railroad and Steamship Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the northern district of Texas:

Now, therefore, the condition of this obligation is such that if the above-named Morgan's Louisiana and Texas Railroad and Steamship Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

MORGAN'S LOUISIANA & TEXAS
R. R. & STEAMSHIP CO.,
By A. C. HUTCHINSON, *Pres't.*
C. P. HUNTINGTON. [L. S.]
CHAS. CROCKER. [L. S.]

Bond accepted.
DON A. PARDEE, *Judge.*

403 STATE OF NEW YORK, *City and County of New York,* } *ss:*

Collis P. Huntington, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State and is worth the sum of six hundred thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution.

C. P. HUNTINGTON.

Sworn to before me this 12th day of May, 1887.

J. F. C. GROW,
[L. S.] *Notary Public, New York County.*

STATE OF NEW YORK, *City and County of New York,* } *ss:*

Charles Crocker, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident in the State of New York and a freeholder in the States of California and New York and is worth the sum of six hundred thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution.

CHAS. CROCKER.

Sworn to before me this 12th day of May, 1887.

J. F. C. GROW,

[L. S.] *Notary Public, New York County.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

404 On this 12th day of May, 1887, personally appeared before me Collis P. Huntington and Charles Crocker, above named, and severally acknowledged that they executed the above bond as their free act for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal this twelfth day of May, 1887.

J. F. C. GROW,

[L. S.] *Notary Public, New York County.*

Endorsed, to wit: "21, equity. U. S. Supreme Court. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Central R'y Co. Bond of Morgan's La. & Tex. R. R. & S. S. Co. Filed May 28, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy."

405 *Bond of Texas Central Railway Company.*

Supreme Court of the United States.

MORGAN'S LOUISIANA AND TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, THE Farmers' Loan and Trust Company, as Trustee, and The Metropolitan Trust Company of the City of New York, as Trustee. } Original Bill.

THE FARMERS' LOAN AND TRUST COMPANY, as Trustee,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, THE Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company. } Cross-Bill.

406 Know all men by these presents that we, the Texas Central Railway Company, a corporation existing under the laws of the State of Texas; Collis P. Huntington, of the town of West Chester and State of New York, and Charles Crocker, of the city, county, and State of New York, are held and firmly bound unto the Morgan's Louisiana and Texas Railroad and Steamship Company, the Farmers' Loan and Trust Company, as trustee, and the Metropolitan Trust Company of the City of New York, as trustee, in the sum of three hundred thousand dollars, to be paid to the said obligees, their and each of their successors; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, ex-

ecutors, and administrators firmly, by these presents. Sealed with our seals. Dated this 23d day of May, 1887. Whereas the above-named Texas Central Railway Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the northern district of Texas: Now, therefore, the condition of this obligation is such that if the above-named Texas Central Railway Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

TEXAS CENTRAL RAILWAY CO.,
By A. C. HUTCHINSON, *Pres't.*
C. P. HUNTINGTON. [L. S.]
CHAS. CROCKER. [L. S.]

Bond accepted.
DON A. PARDEE, *Judge.*

407 STATE OF NEW YORK, }
City and County of New York, } *ss:*

Collis P. Huntington, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State and is worth the sum of six hundred thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution.

C. P. HUNTINGTON.

Sworn to before me this 12th day of May, 1887.

J. F. C. GROW,
[L. S.] *Notary Public, New York County.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Charles Crocker, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident in the State of New York and a freeholder in the States of California and New York and is worth the sum of six hundred thousand dollars over and above all his debts and liabilities and exclusive of property by law exempt from execution.

CHAS. CROCKER.

Sworn to before me this 12th day of May, 1887.

J. F. C. GROW,
[L. S.] *Notary Public, New York County.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

408 On this 12th day of May, 1887, personally appeared before me Collis P. Huntington and Charles Crocker, above named,

and severally acknowledged that they executed the above bond as their free act for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal this twelfth day of May, 1887.

J. F. C. GROW,

[L. S.] *Notary Public, New York County.*

Endorsed, to wit: "21, equity. U. S. Supreme Court. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Central R'y Co. Bond of Texas Central Co. Filed May 28, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy."

409 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Texas.

The President of the United States to the Farmers' Loan & Trust Company, as trustee, a corporation organized under the laws of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and northern district of Texas, wherein Morgan's Louisiana & Texas Railroad & Steamship Company is appellant and The Texas Central Railway Company, The Farmers' Loan & Trust Company, as trustee, and the Metropolitan Trust Company, as trustee, are appelle-s, to show cause, if any there be, why the judgment rendered against the said Morgan's Louisiana & Texas Railroad & Steamship Co., as in said decree of date April 12th, 1887, mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

410 [Endorsed:] United States circuit court, northern district of Texas. No. 21, chancery docket. Morgan's L. & T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et als.* Retain. Citation. Marshal's return, May 26, '87. Filed June 1, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

[Stamped:] U. S. marshal's office, S. D. N. Y. Received May 26, 1887.

I hereby certify that on the 26th day of May, 1887, at the city of New York, in my district, I personally served the within citation upon the within-named Farmers' Loan & Trust Company by exhibiting to Rosewell G. Rolston, president of said company, the within original and at the same time leaving with him a duplicate original thereof.

Dated May 26, 1887.

M. T. McMAHON,

United States Marshal, Southern District of New York,

Per JOHN E. DOWLEY, *Deputy.*

UNITED STATES OF AMERICA. } ss:
Southern District of New York, }

John E. Dowley, being duly sworn, deposes & says that he is a deputy marshal of the United States for the southern district of New York; that on the 26th day of May, 1887, he served an original citation, of which within is a duplicate original, upon the Farmers' Loan & Trust Company, at its office, No. 20 William street, in the city of New York, by delivering to & leaving with Rosewell G. Rolston, the president of said trust company, the original of such citation at the time & place last aforesaid, & that deponent at the time of such service knew the person so served to be the said Roseweli G. Rolston & to be president of said trust company.

{ Seal of the Marshal of the United States of America, Southern District of New York. }

JOHN E. DOWLEY,
U. S. Deputy Marshal.

Sworn to before me this 26th day of May, 1887.

{ Seal John A. Shields, United States Commissioner, Southern District of N. Y. }

JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

411 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Texas.

The President of the United States to the Metropolitan Trust Company as trustee, a corporation organized under the laws of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and northern district of Texas, wherein The Texas Central Railway Company is appellant and Morgan's Louisiana & Texas Railroad & Steamship Company, The Farmers' Loan & Trust Company, as trustee, and the Metropolitan Trust Company as trustee are appellees, to show cause, if any there be, why the judgment rendered against the said Texas Central Railway Company, as in said decree of date April 12th, 1887, mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

412 [Endorsed:] United States circuit court, northern district of Texas. No. 21. Morgan's L. & T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et als.* Retain. Citation. Marshal's return. Filed June 1, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy. Hillhouse.

I hereby certify that on the 26th day of May, 1887, at the city of New York, in my district, I personally served the within citation upon the within-named The Metropolitan Trust Company by exhibiting to Thomas Hillhouse, president of said company, the within original and at the same time leaving with him a duplicate original thereof.

Dated May 26, 1887.

M. T. McMAHON,
United States Marshal, Southern District of New York,
Per JOHN E. DOWLEY, *Deputy.*

[Stamped:] U. S. marshal's office, S. D. N. Y. Received May 26, 1887.

UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

John E. Dowley, being duly sworn, deposes and says that he is a deputy marshal of the United States for the southern district of New York; that on the 26th day of May, 1887, he served an original citation, of which within is a duplicate original, upon the Metropolitan Trust Company, at its office, No. 35 Wall street, in the city of New York, by delivering to and leaving with Thomas Hillhouse, the president of said trust company, the original of such citation at the time and place last aforesaid, and that deponent at the time of such service knew the person so served to be the said Thomas Hillhouse and to be the president of the said trust company.

{ Seal of the Marshal of the United States of America, Southern District of New York. }

JOHN E. DOWLEY,
U. S. Deputy Marshal.

Sworn to before me this 26 day of May, 1887.

{ Seal John A. Shields United States Commissioner, Southern District N. Y. }

JOHN A. SHIELDS,
U. S. Commissioner S. D. N. Y.

413 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Texas.

The President of the United States to the Metropolitan Trust Company, as trustee, a corporation organized under the laws of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a

Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and northern district of Texas, wherein Morgan's Louisiana & Texas Railroad & Steamship Company is appellant and The Texas Central Railway Company, The Farmers' Loan & Trust Co., as trustee, and The Metropolitan Trust Company, as trustee, are appellees, to show cause, if any there be, why the judgment rendered against the said Morgan's Louisiana & Texas Railroad & Steamship Company, as in said decree of date April 12th, 1887, mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

414 [Endorsed:] United States circuit court, northern district of Texas. No. 21, chancery docket. Morgan's L. & T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et als.* Retain. Citation. Marshal's return. Filed June 1, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

I hereby certify that on the 26th day of May, 1887, at the city of New York, in my district, I personally served the within citation upon the within-named The Metropolitan Trust Company by exhibiting to Thomas Hillhouse, president of said company, the within original and at the same time leaving with him a duplicate original thereof.

Dated May 26, 1887.

M. T. McMAHON,
United States Marshal, Southern District of New York,
Per JOHN E. DOWLEY, *Deputy.*

[Stamped:] U. S. marshal's office, S. D. N. Y. Received May 26, 1887.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss.:*

John E. Dowley, being duly sworn, deposes and says that he is a deputy marshal of the United States for the southern district of New York; that on the 26th day of May, 1887, he served an original citation, of which within is a duplicate original, upon the Metropolitan Trust Company, at its office, No. 35 Wall street, in the city of New York, by delivering to and leaving with Thomas Hillhouse, the president of said trust company, the original of such citation at the time and place last aforesaid, and that deponent at the time of

such service knew the person so served to be the said Thomas Hillhouse and to be the president of the said trust company.

{ Seal of the Marshal of the United States of America, Southern District of New York. }

JOHN E. DOWLEY,
U. S. Deputy Marshal.

Sworn to before me this 26th day of May, 1887.

{ Seal John A. Shields, United States Commissioner, Southern District of N. Y. }

JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

415 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Northern District of Texas.

The President of the United States to the Farmers' Loan & Trust Company, as trustee, a corporation organized under the laws of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition & order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and northern district of Texas, wherein The Texas Central Railway Company is appellant and Morgan's Louisiana & Texas Railroad & Steamship Company, The Farmers' Loan & Trust Co., as trustee, and The Metropolitan Trust Co., as trustee, are appellees, to show cause, if any there be, why the judgment rendered against the said Texas Central Railway Company, as in said decree of date April 12th, 1887, mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

416 [Endorsed:] United States circuit court, northern district of Texas. No. 21. Morgan's L. & T. R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et als.* Citation. Marshal's return. Filed June 1, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

I hereby certify that on the 26th day of May, 1887, at the city of New York, in my district, I personally served the within citation upon the within-named Farmers' Loan & Trust Company by exhibiting to Rosewell G. Rolston, president of said company, the within original and at the same time leaving with him a duplicate original thereof.

Dated May 26, 1887.

M. T. McMAHON,
United States Marshal, Southern District of New York,
Per JOHN E. DOWLEY, *Deputy.*

[Stamped:] U. S. marshal's office, S. D. N. Y. Received May 26, 1887.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

John E. Dowley, being duly sworn, deposes and says that he is a deputy marshal of the United States for the southern district of New York; that on the 26th day of May, 1887, he served an original citation, of which within is a duplicate original, upon the Farmers' Loan & Trust Company, at its office, No. 20 William street, in the city of New York, by delivering to and leaving with Rosewell G. Rolston, the president of said trust company, the original of such citation at the time and place last aforesaid, and that deponent at the time of such service knew the person so served to be the said Rosewell G. Rolston and to be the president of the said trust company.

{ Seal of the Marshal of the United States of America, Southern District of New York. }

JOHN E. DOWLEY,
U. S. Deputy Marshal.

Sworn to before me this 26th day of May, 1887,

{ Seal John A. Shields, United States Commissioner, Southern District of N. Y. }

JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

417 *Clerk's Certificate.*

I, John H. Finks, clerk of the circuit court of the United States, fifth circuit, in and for the northern district of Texas, at Waco, do hereby certify that the foregoing four hundred and sixteen pages, numbered from 1 to 416, inclusive, contain a full and true transcript of the record and all the proceedings had as they appear of file and record in this court in cause No. 21, equity, entitled Morgan's Louisiana and Texas Railroad and Steamship Company *versus* The Texas Central Railway Company *et al.*, and in cause No. 33, equity, entitled The Farmers' Loan and Trust Company of the City of New York, trustee, *versus* The Texas Central Railway Company *et al.*

In testimony whereof I have hereunto set my hand and the impress of the seal of said circuit court, at Waco, this the 21st day of June, A. D. 1887.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Waco.]

J. H. FINKS, *Clerk,*
By CHAS. H. LEDNUM, *Deputy.*

Endorsed on cover: N. Texas C. C. U. S. No. 345. Morgan's Louisiana & Texas Railroad and Steamship Company, appellant, *vs.* The Texas Central Railway Company, The Farmers' Loan & Trust Company, trustee, and The Metropolitan Trust Company of the City of New York, trustee. Filed July 2, 1887. No. 349. The Texas Central Railway Company, appellant, *vs.* Morgan's Louisiana & Texas Railroad & Steamship Company, The Farmers' Loan & Trust Company, trustee, & The Metropolitan Trust Company, trustee. Filed July 13th, 1887.